

# South Australian Employment Tribunal Rules 2017



SOUTH  
AUSTRALIAN  
**EMPLOYMENT  
TRIBUNAL**

# South Australian Employment Tribunal Rules 2017

(Varied as at 6 February 2018 by South Australian Tribunal (Amendment No. 1) Rules 2018)

The President and a Deputy President of the South Australian Employment Tribunal after consultation with the Minister make the following Rules under the South Australian Employment Tribunal Act 2014.

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## **PART 1 - Preliminary**

### **1. Name of Rules**

These Rules may be referred to as the South Australian Employment Tribunal Rules 2017 (Rules).

### **2. Commencement**

The Rules will commence operation on 1 July 2017.

### **3. Revocation and transitional provisions**

- (1) Subject to this rule, the South Australian Employment Tribunal Rules 2015 are revoked.
- (2) A proceeding commenced in the Tribunal prior to 1 July 2017 under the South Australian Employment Tribunal Rules 2015 will, subject to any direction to the contrary made by the Tribunal, operate under the Rules from 1 July 2017.
- (3) In respect of any other proceeding commenced prior to 1 July 2017 and transferred to the Tribunal, the Tribunal may give directions to resolve any uncertainty about which rule applies to the proceeding, or to a particular step in the proceeding, and may do anything else necessary to ensure the smoothest possible transition from one jurisdiction to another.

### **4. Purpose and application of the Rules**

- (1) The purpose of the Rules is to help the Tribunal achieve its statutory objectives and:
  - (a) ensure that proceedings before the Tribunal are dealt with in a way that is independent, transparent, accessible, fair, just, economical and quick, with as little formality and technicality as possible; and
  - (b) guide the Tribunal and parties to proceedings to resolve disputes consistently, economically and quickly, while allowing flexibility to cater for different needs of particular parties; and
  - (c) provide procedures that are the same for all matters, except if special procedures are required for particular types of matters.
- (2) The Rules are to be applied in a way that can best achieve the statutory objectives of the Tribunal including by:
  - (a) encouraging the early and economical resolution of disputes before the Tribunal, including, if appropriate, by conciliation, mediation, and inquisitorial processes; and
  - (b) conducting proceedings with as little formality and technicality as possible in a way that minimises the cost to parties, and which is consistent with achieving justice; and
  - (c) recognising, and being responsive to, the diverse needs of persons who use the Tribunal; and
  - (d) recognising that strict compliance with a procedural requirement in the Rules may not always be necessary.

### **5. Cost effectiveness**

- (1) Tribunal proceedings must be conducted efficiently and in a manner proportionate to the matter in dispute. Proportionality means ensuring that legal costs and other costs incurred in connection with a proceeding are reasonable and proportionate to the importance and complexity of the issues in dispute.

- (2) Legal practitioners and other persons authorised to represent a party in proceedings must use their best endeavours to facilitate the just, quick and cost effective resolution of the real issues in proceedings before the Tribunal.

## 6. Interpretation

- (1) In the Rules, unless a contrary intention appears:

words used have the same meaning as words used in the SAET Act or Regulations or a relevant Act or regulations made under a relevant Act;

**registrar** means the Registrar or a Deputy Registrar of the Tribunal;

**applicant** has the same meaning it has in the SAET Act;

**approved form** - a document for a particular purpose is in an approved form if it is in the form of, or substantially similar to, the document approved for that purpose by the President and published on the Tribunal's website, or otherwise made available for use by the Tribunal, for the relevant purpose;

**company** means a body corporate including a corporation sole;

**contact details of a person** means the person's address, telephone number, mobile number, pager number, facsimile number and email address (as far as each are known or relevant) that can be used by the Tribunal and other parties or persons to contact the person in relation to the proceedings (and in relation to an Australian company, includes the address of the registered office of the company);

**contempt** includes—

- (a) a contempt in the face of the Tribunal;
- (b) disruption of the proceedings of the Tribunal;
- (c) obstruction or perversion of the course of justice—
  - (i) by intimidation of or interference with a witness; or
  - (ii) by making statements or publishing material that could prejudice the fair and impartial determination of proceedings before the Tribunal; or
  - (iii) in any other way;
- (d) obstruction or interference with the proper performance of official duties by an officer of the Tribunal;
- (e) deliberate non-compliance with a judgment or order of the Tribunal;
- (f) an attempt to do anything that would, assuming the attempt had been carried successfully to conclusion, have constituted a contempt under any of the above paragraphs;

**Court** means the South Australian Employment Court however constituted and includes the Full Bench of the Court;

**decision** has the same meaning it has in the SAET Act;

**initiating application** means any document by which a proceeding in the Tribunal is started by a person, or by which the Tribunal's jurisdiction is otherwise invoked, and includes an internal review, an appeal and a referral made to or claim brought before the Tribunal under a relevant Act;

**Practice Direction** means a direction made by the President about practices and procedures adopted by the Tribunal;

**proceeding** means any matter, dispute, application, hearing, review, trial, reference, case stated, appeal or other step whatsoever before the Tribunal

however constituted pursuant to the SAET Act or in consequence of any jurisdiction vested in it or a member by a relevant Act, whether at the interlocutory or hearing stage or otherwise;

**registered agent** means a person who is named on the list of registered agents maintained under s 152 of the Fair Work Act 1994;

**Regulations** means South Australian Employment Tribunal Regulations 2015;

**relevant Act** means an Act which confers jurisdiction on the Tribunal;

**respondent** means a person or entity in relation to whom a decision of the Tribunal or some other form of relief is sought by an applicant;

**response** means a respondent's answer to an initiating application or any other application made to the Tribunal;

**SAET Act** means South Australian Employment Tribunal Act 2014;

**the Registrar** means the principal registrar of the Tribunal;

**Tribunal** means the South Australian Employment Tribunal however constituted and, where the context permits, includes the Tribunal in Court Session;

**Tribunal in Court Session** means the South Australian Employment Court.

- (2) A reference in the Rules to any Act or statutory instrument means that Act or statutory instrument as amended or substituted from time to time and includes any instrument made under it or the substituted Act or statutory instrument.
- (3) The Rules are to be read as subject to the SAET Act and Regulations and to any applicable provision of a relevant Act or regulations made under a relevant Act.
- (4) The Rules are organised into general rules and rules that apply to specific types of matters. To the extent that there is an inconsistency between a general rule and a rule dealing with a specific type of matter, the specific rule is to apply, subject to contrary order of a Presidential member.

## **7. Application of the District Court Rules**

Subject to any order to the contrary made by the Tribunal, where any matter is not provided for under the Rules, the SAET Act or a relevant Act, the general principles of the practice of the District Court of South Australia in its civil jurisdiction as in force from time to time and any relevant forms used in that Court may be adopted and applied in matters before the Tribunal with such modifications as the circumstances in any particular case may make necessary.

## **8. Directions, relief from time limits and dispensation from the Rules**

- (1) The Tribunal may upon application or on its own initiative:
  - (a) give directions about the procedure to be followed in a particular matter;
  - (b) extend or abridge a time limit for doing anything in connection with any proceedings, or in relation to commencing any proceedings; or
  - (c) vary any requirement of the Rules; or
  - (d) dispense with compliance by any person, or by the Tribunal, with any requirement of the Rules, either before or after the time for compliance arises, and in doing so, may impose any conditions or give any consequential or other directions as are appropriate.
- (2) An extension of time will automatically be granted, without application, to enable the Tribunal to conciliate a matter, subject to any order to the contrary made by a Presidential member at any time in the proceedings.

- (3) Sub-rule (2) does not apply to a proceeding to which the Dust Diseases Act 2005 applies.
- (4) Sub-rule (2) applies to a monetary claim or a claim for relief against unfair dismissal under the Fair Work Act 1994 but does not apply to any other proceeding under the Fair Work Act 1994.
- (5) Sub-rule (2) does not apply to a review under the Public Sector Act 2009.
- (6) A registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this rule.

## **9. Seals of the Tribunal**

- (1) The seals of the Tribunal will be applied to such documents as the President may direct.
- (2) The Tribunal's seals will be in the form that the President approves and kept in the custody of the Registrar.

## **10. Practice Directions and Guidelines**

- (1) The President may make any Practice Direction contemplated by the Rules or considered necessary for the regulation of proceedings in the Tribunal.
- (2) The President may issue Guidelines with respect to particular classes of proceedings in order to assist parties in the preparation and conduct of proceedings.

## **PART 2 - Additional non-criminal jurisdiction of the Court**

(Rule 11 revoked and substituted by South Australian Tribunal (Amendment No. 1) Rules 2018)

### **11. Assignment of additional jurisdictions to the Court**

In addition to the jurisdiction conferred on the Court by the SAET Act or a relevant Act, non-criminal proceedings under any of the following Acts or parts of Acts and proceedings in the Tribunal's jurisdiction at common law or in equity are assigned to the Court should the relevant proceedings be referred for hearing and determination at the conclusion of conciliation in that part of the Tribunal that does not sit as the Court:

- (a) Sections 8, 11 and 12, and Chapter 3, Part 6 of the *Fair Work Act 1994*;
- (b) Section 13 of the *Long Service Leave Act 1987*;
- (c) *Return to Work Act 2014*, except for proceedings under Part 7 of that Act;
- (d) SAET Act; and
- (e) *Work Health and Safety Act 2012*, except for matters under section 65, Part 7 and Part 12 of that Act.

## **PART 3 - Documents**

### **12. Form of documents**

- (1) All documents filed with the Tribunal must:
  - (a) be in English or, if not in English, be accompanied by a translation of the document into English either prepared by a professional translator or as directed by a registrar; and

- (b) clearly identify the name of the party filing the document or on whose behalf the document is filed; and
- (c) include the Tribunal's reference number for the proceedings if known.

### **13. Filing documents with the Tribunal**

- (1) Any document, including any approved form, affidavit or other document a party intends to rely on in any proceedings, must be filed at the registry of the Tribunal.
- (2) Subject to the Rules, a document must be filed with the Tribunal:
  - (a) by lodging it at the registry electronically; or
  - (b) by lodging a hard copy at the registry; or
  - (c) by sending it by post to the registry; or
  - (d) by lodging it at the document exchange address of the Tribunal; or
  - (e) subject to compliance with any applicable Practice Directions, by providing it by any other means that the Tribunal makes available for that purpose.
- (3) A registrar may refuse to receive a document that is presented to the Tribunal for filing in paper or other physical form and may direct that the document be filed with the Tribunal in a specified electronic form.

### **14. Registrar may receive documents**

Subject to the Rules, if a registrar considers it appropriate to do so, he or she may receive an application or other document even though it does not comply with the Rules, and he or she may do so subject to any terms and conditions considered appropriate.

### **15. Registrar may refuse to receive documents**

- (1) Subject to the Rules, a registrar may refuse to receive any application or document if it does not comply with the Rules.
- (2) A registrar must refuse to receive an application or other document for filing at the Tribunal if:
  - (a) it is not reasonably legible; or
  - (b) it is an application that is beyond the jurisdiction of the Tribunal and a Presidential member of the Tribunal has directed a registrar to refuse or reject the application for filing; or
  - (c) the application or document is an abuse of the Tribunal's process or is scandalous, frivolous or vexatious and a Presidential member of the Tribunal has directed a registrar to refuse or reject the application or document for filing.
- (3) A Tribunal member may hold any hearings or give any directions that may be considered necessary under this rule.
- (4) The Tribunal may dismiss an application commenced by a document which is rejected under this rule, but that dismissal does not prevent a further application that complies with the Rules, the SAET Act and with any relevant Act from being made.

### **16. Provision by the Tribunal of copies of documents to parties and other persons**

- (1) Subject to the Rules, where any initiating application is filed with the Tribunal, a registrar must as soon as reasonably possible, and in any event within 3 business days, serve a copy of the application and any supporting documents:

- (a) on each other party to the proceedings; and
  - (b) on any other person not a party to the proceedings as required by the Rules or any Act.
- (2) If an initiating application is filed with the Tribunal within 3 business days of the hearing of the relevant proceedings, a registrar may:
- (a) prior to the commencement of the hearing of the proceedings, give a copy of the application and any supporting documents to any person who should receive a copy of the document under the Rules; or
  - (b) require the person filing the application to serve, within a specified time prior to the commencement of the hearing of the proceedings, a copy of the application and any supporting documents on any person who should receive a copy of the application and document under the Rules.
- (3) Subject to the Rules and to the extent that it is reasonably necessary to achieve a just outcome in proceedings before the Tribunal or otherwise to achieve the objectives of the SAET Act, a Presidential member of the Tribunal may direct a registrar to serve a copy of any document or part of any document (including an application, response or other document that is filed with the Tribunal, a summons issued by the Tribunal, any notice arising during the course of proceedings or any directions or orders made by the Tribunal) on any person he or she reasonably considers has a proper interest in the matter and should be served with a copy.
- (4) A registrar can serve a notice or any other document on a party or other person by any means that the registrar considers appropriate to bring the document to the attention of the party or other person, including by electronic means.
- (5) If a person refuses to accept a document, it may be served on him or her by putting the document down in his or her presence and telling him or her of the nature of it.
- (6) A registrar is not obliged to serve a copy of any document on a person if the person's whereabouts or contact details cannot be ascertained after reasonable enquiries have been made.

#### **17. Power to order presumptive service**

- (1) The Tribunal may, on application by a party in the approved form, make an order for presumptive service of a document.
- (2) An order for presumptive service will have the effect that, if the conditions of the order are complied with, service of a copy of the document to a relevant party or other person will be presumed.
- (3) Without limiting the nature of an order for presumptive service, an order may provide that service upon one person will stand as service upon another person who is not able to be served or an order may provide that the giving of a notice by some means determined by the Tribunal will stand as service upon a person.

#### *Examples –*

- 1. *An order for presumptive service might provide for serving a copy of the document to a person who might reasonably be expected to bring the document to the attention of the party.*
- 2. *An order for presumptive service might provide for the publication of notice of the document in a particular newspaper or newspapers or by other means (including electronically).*

## **18. Parties to serve copies of documents on each other**

- (1) Subject to the Rules, in the case of any document that is not an initiating application, the party filing it must within 7 days serve a copy of the document and any supporting documents on all other parties to the proceedings, and on any other person not a party as required by the Rules or any Act (unless there is a hearing scheduled in relation to the matter, in which case the copies must be served not less than 3 business days before the date of the hearing).
- (2) The Rules or a Practice Direction may require that a party serve a copy of a particular document on another party or person, in which case the copy must be served on the other party or person:
  - (a) on the same day or as soon after filing as possible if hard copy documents are filed, or where documents are filed electronically, at the same time the documents are filed; or
  - (b) as directed by a registrar of the Tribunal (which may include that the party file with the Tribunal an affidavit as to service of the document on the other party or person).
- (3) If the relevant document is a summons issued by the Tribunal under s 33 of the SAET Act, the applicant for the summons must ensure that the summons is served on the person named in the summons at least 5 business days before the date specified in the summons for attendance or as otherwise directed by a member of the Tribunal.
- (4) In any proceeding where an applicant is required to serve a document that initiates a proceeding upon another party, the applicant is responsible for proving that service of the document was effected.
- (5) Service of a document may be proved by an affidavit made by the person who served the document setting out:
  - (a) the date, time and place of service;
  - (b) how the person to be served was identified; and
  - (c) how service was effected.
- (6) The Tribunal may provide such directions as to service as are required in an individual case having regard to the circumstances of that case and may determine that a document has been served even if sub-rule (5) has not been complied with.

## **19. Serving copies on a partnership, trustees or unincorporated association**

- (1) For the purposes of the Rules but subject to sub-rule (3), if a proceeding is commenced against the members of an existing partnership in the partnership name, a document is taken to have been served on all members of the partnership if it is served on -
  - (a) any member of the partnership; or
  - (b) a person who apparently has the management or control of a business operated under the partnership.
- (2) For the purposes of the Rules but subject to sub-rule (3), if a proceeding is commenced against trustees of an existing trust in the trust name, a document is taken to have been served on all trustees if it is served on -
  - (a) any trustee; or
  - (b) a person who apparently has the management or control of a business operated under the trust.

- (3) If the partnership or trust has been dissolved, all former members or trustees against whom the party initiating the proceeding desires to pursue the relevant claim must be individually served with a copy of the relevant document.
- (4) For the purposes of the Rules, if a proceeding is commenced against an unincorporated association in the name of the association, a document is taken to have been served on the association if it is served on -
  - (a) any member of the committee of management of the association; or
  - (b) any person who holds property on trust for the purposes of the association; or
  - (c) a person who apparently has the management or control of the business of the association.

## **PART 4 – Applications and responses**

### **20. Applications**

- (1) All initiating applications must be in the relevant approved form setting out the grounds for the application and the remedy sought and must be accompanied by any prescribed fee or an application in the approved form to waive or reduce the fee.
- (2) All other applications in relation to proceedings, including applications for general directions about the conduct of the proceedings, must be in the approved form and:
  - (a) include the type of application being made and, if relevant, the legislation under which it is made; and
  - (b) include the reasons for the application; and
  - (c) include the directions or remedy sought, including the amount sought if it is a monetary claim.
- (3) If an extension of time is sought to make any application or to do any other thing, the application must expressly request the extension of time and include the reasons why the extension of time should be given.
- (4) To the extent that he or she has not already done so previously in the proceedings, the person filing the relevant application must provide details of any known requirement for an interpreter, for assistance with a disability or any special cultural, security or other need of a party or witness or other person proposing to attend a conference or a hearing.

### **21. When an application is commenced**

- (1) An application is commenced on whichever is the later of:
  - (a) the date and time that the application is filed in the Tribunal; and
  - (b) if a fee is required to be paid under the Regulations in respect of the application, the date and time that the fee is paid or the fee is waived.

### **22. Counter-applications and third-party applications**

- (1) If the Tribunal's jurisdiction permits, a respondent to an initiating application in the Tribunal's jurisdictions under Division 1 or 2 of Part 3 of the SAET Act may, in the response to the application or separately, make a counter-application to the Tribunal for a remedy against the applicant or against a person who is not a party to the proceedings (a "third-party application").

- (2) A respondent to an application for internal review or appeal who seeks to have the Tribunal's original orders set aside or varied for reasons that differ from those of the applicant may, in the response to the application or separately, make a counter-application for internal review or appeal of the Tribunal's decision.

(Rule 22(3) revoked and substituted by South Australian Tribunal (Amendment No. 1) Rules 2018)

- (3) If the respondent contends that the appeal should be dismissed for reasons different from those contained in the decision being appealed, the respondent must file a notice stating in detail the grounds on which the respondent asserts that the decision should be upheld (notice of alternative contentions) and provide a copy to the applicant within 14 days after being served with a copy of the appeal.
- (4) Any counter-application or third-party application must comply with any relevant rule for applications of the relevant type and any response to a counter-application or third-party application must comply with any relevant rule for responses.
- (5) Unless a prescribed fee is waived, a party is not relieved from any requirement to pay any prescribed fee applicable to the counter-application or third-party application.

### **23. Responses to applications**

- (1) Subject to the Rules, a response to an application must be in an approved form and must include the respondent's answer to the application and must comply with any relevant rule for the response.
- (2) A response must be filed with the Tribunal, and a copy served on all other parties, within 14 days of the respondent receiving a copy of the relevant application.
- (3) If the Tribunal considers it appropriate to help effectively dispose of an application, the Tribunal may direct a party to file and serve a copy of a response to an application within a specified time.
- (4) The response must:
  - (a) admit or deny, either with or without qualification, each statement of fact made in the application; and
  - (b) state whether the relief claimed is agreed to or opposed.
- (5) Unless otherwise ordered by the Tribunal, each claim set out in the application, and any liability of the respondent to pay any money claimed or give any other relief, will be taken to be admitted unless specifically denied in a response filed in the Tribunal.
- (6) To the extent that he or she has not already done so in the proceedings, the person filing the relevant response must provide details of any known requirement for an interpreter, for assistance with a disability or any special cultural, security or other need of a party or witness or other person proposing to attend a conference or a hearing.

### **24. Amendments**

- (1) Subject to this rule, an application, response, counter-application or notice of alternative contentions may be amended without permission of the Tribunal by filing a supplementary document of the relevant type and serving a copy of the supplementary document on all other parties within 5 business days of the original filing date.
- (2) A party who has filed a document to which this rule applies may only amend the document once without the permission of the Tribunal.

- (3) After the relevant application has been listed for a conference or a hearing, an amendment may only be made with the permission of the Tribunal.
- (4) A registrar is expressly authorised to constitute the Tribunal for the purposes of this rule.

## **25. Application to review a decision due to absence**

- (1) An application to review a decision because a person failed to attend or was not represented at a relevant hearing within the meaning of s82 of the SAET Act must be made within 14 days of the relevant hearing.
- (2) An application under this rule is made by an application for directions supported by an affidavit which explains the circumstances of the failure to attend or be represented.

## **26. Withdrawal of proceedings**

- (1) Unless a relevant Act or the Rules provide otherwise, a proceeding or a part of a proceeding may be withdrawn by an applicant without the permission of the Tribunal upon the applicant filing a written notice of withdrawal with the Tribunal in the approved form.
- (2) If the permission of the Tribunal under s40 of the SAET Act is required for withdrawal of a proceeding, an application for permission must be made in the approved form.
- (3) If a notice of withdrawal is filed under this rule, a registrar must serve a copy of the notice on each other party and any other person a Tribunal member directs is to be served a copy.
- (4) Subject to sub-rule (5), if a proceeding has been set down for hearing, a party may only withdraw that proceeding with the consent of all other parties or with the permission of the Tribunal.
- (5) An applicant claiming relief under s106 of the Fair Work Act 1994 may file a notice of withdrawal at any time but will be subject to any costs orders the Tribunal may make under s110(2) of that Act.
- (6) The withdrawal of an internal review or an appeal does not affect a counter-application in the same proceeding.
- (7) Subject to the following exceptions, a party who withdraws a proceeding is not prevented from bringing a further proceeding based on the same or substantially the same claim.

### *Exceptions -*

1. *If a party to the later proceeding is entitled to costs in relation to the earlier proceeding, the Tribunal may, on the application of that party, stay any proceeding based on the same or substantially the same claim until the costs have been paid.*
2. *The Tribunal may order that the withdrawal of a proceeding is to have the same effect as a final judgment against the party withdrawing if the withdrawal is for the purpose of giving effect to a final settlement agreed between the parties.*
3. *A further proceeding may not be brought if a relevant time limit has expired and the Tribunal has not granted an extension of time.*

## **27. Changes to contact details and representation arrangements**

- (1) A party whose contact details change while the Tribunal is considering a matter must, within 7 days of the change, file with the Tribunal a written notice in the approved form setting out the new details.
- (2) A representative who no longer acts for a party in proceedings before the Tribunal must, within 7 days of ceasing to act, file with the Tribunal a written notice in the approved form of that fact and serve a copy of the notice on the party and on all other parties which notice must include an address for service of the party.

## **28. Oral applications**

Notwithstanding anything in the Rules, but subject to any express provision of the SAET Act or a relevant Act, an application for any direction or interlocutory or final order of the Tribunal, and any response, may be made orally or in such other manner as the Tribunal may, in the particular circumstances, determine to be fair and convenient. The Tribunal may make a determination under this rule subject to conditions, including requiring notice to be given to any other party.

## **PART 5 - Criminal Jurisdiction**

### **29. Criminal Procedure**

- (1) The Magistrates Court Rules 1992 (Criminal Jurisdiction) generally apply, to the exclusion of the Rules, to the practice and procedure of the Tribunal in the exercise of its jurisdiction over offences, with such modifications as the circumstances in any particular case may make necessary.
- (2) The Tribunal may modify the application of the Magistrates Court Rules 1992 either generally, including by a Practice Direction, or having regard to the requirements of particular cases in the light of the nature of the Tribunal's jurisdiction over offences and the number of prosecutions that may from time to time be commenced in the Tribunal.

## **PART 6 - Review jurisdiction**

### **30. Application of Part**

This Part applies to an application made under Division 1 of Part 3 of the SAET Act.

### **31. Applications for review**

- (1) An initiating application for review of a decision must be filed in the Tribunal in the approved form.
- (2) The application must be accompanied by:
  - (a) copies of any relevant documentary material;
  - (b) sufficient details of the complaints made about the decision so as to enable the relevant decision-maker to understand why and on what bases the decision is disputed;
  - (c) if the reviewable decision to which the application relates was communicated to the applicant in writing, a copy of the decision; and
  - (d) if the reviewable decision was not communicated to the applicant in writing after being made, sufficient other information so that the Tribunal can identify the decision, the decision-maker and the legislation under which the decision was made.

- (3) If in the opinion of a registrar the detail provided in an application for review is insufficient, or supporting documents which must be attached to the application for review are not attached, a registrar or other Tribunal member may refuse to accept the application.
- (4) Where a registrar or other Tribunal member has refused to accept an application under this rule, the party whose application was refused is permitted to file a further application for review which complies with the Rules and any relevant Act within 14 days of the refusal, in which case the date of filing will be taken to be the date the original application for review was filed.

### **32. Section 28 statements, documents and things**

- (1) For the purposes of s28 of the SAET Act in proceedings for the review of a decision, the written statement of the reasons for a decision and any document or thing in the decision-maker's possession or control that may be relevant to the Tribunal's review of the decision must be filed in the Tribunal in a Book of Documents in the approved form within the time allowed by regulation 5 of the Regulations.
- (2) Subject to this rule and any order of the Tribunal to the contrary, at the same time that the Book of Documents is filed in the Tribunal, the decision-maker must provide a copy to all other parties.
- (3) The requirement to provide a copy of a Book of Documents to other parties does not apply to any part of a Book of Documents that is the subject of a claim under the following sub-rule and the provision of a copy of that part of the Book of Documents is subject to a direction of the Tribunal.
- (4) Where the decision-maker is aware that one or more documents that are required to be provided under s28 of the SAET Act are the subject of a claim of privilege, public interest immunity or other immunity or a claim of non-disclosure for other proper reason, then a copy of the Book of Documents does not need be provided to the other parties under sub-rule (2) and the decision-maker must place the documents into separate parts of the Book of Documents of which:
  - (a) one part is to contain all documents about which such a claim is made and include a clear statement as to the basis upon which the claim is made for each document and be clearly marked with a prominent statement that the part contains confidential materials that are only to be accessed on the direction of a Presidential member of the Tribunal; and
  - (b) the balance of the Book of Documents is to contain all other required material subject to s28 of the SAET Act, including where relevant a redacted copy of any document subject only in part to a claim under this sub-rule.
- (5) A decision made under the Return to Work Act 2014 that complies with regulation 20 of the Return to Work Regulations 2015 will be taken to comply with s28(2)(a) of the SAET Act.

## **PART 7 - Original Jurisdiction**

### **33. Application of Part**

This Part applies to:

- (1) an application made under an Act which confers an original jurisdiction on the Tribunal for the purposes of s31A of the SAET Act; and
- (2) to an application made to the Tribunal in the exercise of its jurisdiction at common law or in equity.

### **34. Applications in original jurisdiction**

An initiating application in the Tribunal's original jurisdiction must be filed in the Tribunal in the approved form.

### **35. Actions for damages under the Return to Work Act 2014**

- (1) Unless the Rules or a Practice Direction provide otherwise, in an action for damages under Part 5 of the Return to Work Act 2014, or an action seeking contribution from any other tortfeasor liable in respect of those damages, the practice of the District Court of South Australia in its civil jurisdiction as in force from time to time will be applied.
- (2) All documents filed in an action under this rule must indicate that the document is filed in the South Australian Employment Court and must have immediately underneath the action number the words "Damages Claim, Return to Work Act 2014".
- (3) If a claim for damages under Part 5 of the Return to Work Act 2014 gives rise to a claim for some other matter and that claim is made along with the claim for damages, the precise nature of the other matter is to be specifically pleaded and properly explained in any relevant pleading.

### **36. Actions for recovery of compensation under the Return to Work Act 2014**

- (1) Unless the Rules or a Practice Direction provide otherwise, in an action seeking recovery of compensation from a wrongdoer under Division 10 of Part 4 of the Return to Work Act 2014, the practice of the District Court of South Australia in its civil jurisdiction as in force from time to time will be applied.
- (2) All documents filed in an action under this rule must indicate the document is filed in the South Australian Employment Court and must have immediately underneath the action number the words "Recovery Claim, Return to Work Act 2014".

### **37. Actions under the Dust Diseases Act 2005**

- (1) Unless the Rules or a Practice Direction provide otherwise, in an action to which the Dust Diseases Act 2005 applies, the general practice of the District Court of South Australia in its civil jurisdiction as in force from time to time will be applied.
- (2) All documents filed in an action to which the Dust Diseases Act 2005 applies must indicate the document is filed in the South Australian Employment Court and must have immediately underneath the action number the words "Dust Diseases Act 2005". Such proceedings will be put into the Dust Diseases List and managed in accordance with this rule.
- (3) At the first interlocutory hearing, a category will be assigned to the action based on the state of health of the plaintiff or such other matter as the Court considers relevant.
- (4) These categories are—  
**Ordinary cases:** when the case is not urgent because the plaintiff is suffering from a non-life-threatening dust disease or a claim is made for compensation to relatives or for other reasons.  
**Urgent cases:** when the plaintiff is seriously ill and an expedited hearing is needed or there are other circumstances giving rise to urgency.
- (5) If a party seeks to have proceedings categorised as urgent, whether upon commencement or at a later time, an interlocutory application seeking a special hearing date for directions is to be filed together with an affidavit setting out as fully as circumstances permit—

- (a) the nature of the disease alleged;
  - (b) the condition of the plaintiff's health and the degree of urgency;
  - (c) particulars of notification served to other parties to the proceedings and practitioners by whom they are represented;
  - (d) readiness for hearing;
  - (e) whether experts' reports have been obtained and served on other parties;
  - (f) whether further medical examinations are required;
  - (g) a proposed expedited interlocutory timetable;
  - (h) if a hearing date is to be sought forthwith, the details and availability of witnesses and where it is requested that evidence be taken; and
  - (i) where possible, a medical report is to be exhibited.
- (6) An application under sub-rule (4) will be listed as soon as possible.
  - (7) The Tribunal may give directions in a particular matter, or may make general Practice Directions, to ensure that there is no material difference between the practices and procedures of the Tribunal and those of the District Court when dealing with dust disease matters.

## **PART 8 - Interlocutory applications**

### **38. Applications for specific or general directions**

- (1) A party seeking general directions under s37 of the SAET Act about the conduct of proceedings, or seeking any specific interlocutory or non-final order, must make an application for directions in the approved form.
- (2) Each application filed under this rule must specify all orders sought and make specific reference to the provision of the SAET Act and / or a relevant Act authorising the application and must provide any information required by any applicable Practice Direction.
- (3) An application for directions must be filed electronically if possible or otherwise in accordance with any Practice Direction or Guideline or the Rules.
- (4) Unless a registrar determines otherwise, an application for directions must not be listed to be heard at the next hearing scheduled for a matter unless the application is made, and a copy served on all other parties, not less than 3 business days prior to the scheduled hearing.
- (5) The Tribunal will usually deal with an interlocutory application on the papers and any submission, legal argument or fact asserted or relied upon needs to be described in the interlocutory application or an affidavit filed in support of the application.
- (6) The Tribunal may revoke or vary any order for directions on application or on its own initiative.

### **39. Section 65 SAET Act - enlarging the scope of proceedings**

- (1) An application to enlarge the scope of proceedings under s65 of the SAET Act (including such an application made in relation to the Return to Work Act 2014) must be made in the approved form and a copy of the application together with a notice of objection in the approved form must be served on all other parties to the proceedings at least 14 days before the application is heard by the Tribunal.

- (2) If a notice of objection is not filed by any party within 14 days of the party being served a copy of an application under this rule, all parties to the proceedings will be taken to have consented to the application.
- (3) Where parties to proceedings seek the making of consent orders that involve the resolution of a question not presently at issue in the proceedings before the Tribunal, they will be deemed to have sought and been given an order pursuant to s65 of the SAET Act to enlarge the scope of the proceedings to answer the questions necessary to make the orders, and to have obtained the consent of all relevant parties necessary to have done so.

#### **40. Review under s82 of the SAET Act**

- (1) An application under s82 of the SAET Act made by a person in respect of whom the Tribunal has made a decision when the person was absent and not represented at the hearing must be filed at the Tribunal in the approved form within 30 days of the Tribunal's decision and must include:
  - (a) details of the relevant proceedings and decision; and
  - (b) when and how the applicant became aware of the Tribunal's decision; and
  - (c) the applicant's reasons for not appearing or being represented at the relevant hearing.
- (2) A person may only make one application under s82 of the SAET Act in respect of the same matter without the permission of the Tribunal.

#### **41. Directions made by consent**

If a party on whom an application for directions is served advises the Tribunal in writing prior to the day on which the application is heard that the party does not wish to be heard upon the application or consents to the orders sought, the Tribunal may excuse the party from attending the hearing.

### **PART 9 - Compulsory Conciliation Conferences**

#### **42. Compulsory conciliation conferences**

- (1) Subject to the SAET Act or a relevant Act, where a compulsory conciliation conference under s43 of the SAET Act is to be held, the procedure for the conduct of the conference will be as set out in this Part and any applicable Practice Direction.
- (2) Subject to any contrary direction by a Presidential member, a compulsory conciliation conference will be conducted by a Commissioner.

#### **43. Initial directions hearing**

- (1) Subject to any contrary direction by a Presidential member, an initial directions hearing under s43(1) of the SAET Act will be conducted by a Commissioner.
- (2) The initial directions hearing may be conducted in person or by telephone or other means.
- (3) At the initial directions hearing the Commissioner will consider the following:
  - (a) the issues in dispute;
  - (b) whether any reconsideration of a decision under review has been completed;
  - (c) the grounds of the application;
  - (d) the evidence on which the parties intend to rely;

- (e) whether further evidence is needed to have an effective compulsory conciliation conference;
  - (f) the persons who may be required to attend a compulsory conciliation conference;
  - (g) any other issue that the Commissioner considers relevant.
- (4) The parties or their representatives must be prepared to address the matters outlined in sub-rule (3) at the initial directions hearing.

#### **44. Commencement of conference**

- (1) An initial directions hearing is to be conducted within 21 days of the lodgement of an application.
- (2) A compulsory conciliation conference requiring the attendance of the parties must be scheduled as soon as the Commissioner or other Tribunal member conducting the matter is satisfied the matter is ready for a conference. This should ordinarily be within 28 days of when the initial directions hearing takes place unless special circumstances which justify setting a later date exist.

#### **45. Actions and powers of Commissioners generally**

- (1) A Commissioner may exercise such powers and give such directions as may reasonably be required for the effective conduct of the conference.
- (2) A Commissioner may contact a party and may ask questions in relation to the issue in dispute, and may provide his or her view of the merits of that issue with a view to making suggestions about the form and content of the conference.
- (3) A Commissioner may at any time require a party or any other person, within a specified time, to:
  - (a) identify, clarify and narrow the issues in dispute;
  - (b) review the evidence relied upon;
  - (c) identify any issues affecting the parties' ability to negotiate;
  - (d) consider strategies and develop a plan for gathering information;
  - (e) deal with actual or anticipated developments that may affect the dispute;
  - (f) attempt to resolve the dispute or some of the issues in dispute;
  - (g) give particulars outlining the factual and legal basis underpinning their position;
  - (h) require a claimant to formulate the amount or type of compensation sought;
  - (i) submit to, or help facilitate, the referral of a medical question to an independent medical adviser under s121 of the Return to Work Act 2014;
  - (j) provide further material reasonably required to conciliate the dispute;
  - (k) make disclosure of documents as set out in the Rules;
  - (l) comply with his or her obligations under s104(3) of the Return to Work Act 2014 for disclosure and access to evidentiary material;
  - (m) file a Book of Documents (or an index to a Book of Documents) in the approved form and serve a copy on all other parties.

**46. Requirements for parties and representatives at a compulsory conciliation conference**

- (1) At a compulsory conciliation conference, the parties must attend in person and if represented by a solicitor or an officer of an industrial association, the person with conduct of the matter must also attend.
- (2) Any party attending a compulsory conciliation conference is expected to participate in an active way, and may be required to:
  - (a) detail the preparatory work undertaken for the compulsory conciliation conference, and answer whether or not actions or steps the Commissioner requested or ordered be undertaken have been undertaken;
  - (b) meet with the Commissioner and produce evidentiary material, either at the compulsory conciliation conference or at some other time or place;
  - (c) answer questions put by the Commissioner;
  - (d) attend a compulsory conciliation conference when the other party may not be present;
  - (e) disclose any offers of settlement that have been made to the other party.

**47. Adjournments of conferences**

An application to adjourn a compulsory conciliation conference must be accompanied by any documents (such as medical certificates) that support the reason for seeking the adjournment.

**48. Actions of Commissioners if settlement is not reached**

- (1) If settlement of a matter is not achieved at a compulsory conciliation conference and a prehearing conference is listed, a Commissioner will:
  - (a) have regard to what actions the parties must take so that they are properly prepared for a pre-hearing conference, and may:
    - (i) order that a statement of facts and/or issues in dispute be prepared by the parties;
    - (ii) ascertain what expert evidence (if any) each party intends to rely upon, and whether reports have been sought from those experts, and if appropriate issue directions accordingly having regard to the time limit for seeking reports set out in the Rules;
    - (iii) make any other order or direction necessary to facilitate the expeditious resolution of the matter, and
  - (b) within the time allowed by any relevant Act, prepare and forward to the parties a memorandum which complies with s43(13) of the SAET Act and also contains a summary of the nature of each dispute, the matters remaining in issue, and the positions of the parties.
- (2) A s43(13) memorandum must be kept confidential from the Tribunal member who hears and determines the dispute and is not admissible in proceedings before the Tribunal except at the conclusion of proceedings for the purposes of considering making an adverse costs order under s106(3) of the Return to Work Act 2014 or for making any other order permitted by the SAET Act, a relevant Act or the Rules.
- (3) A Tribunal member who presides over a compulsory conciliation conference or a settlement conference in relation to a proceeding must not hear and determine the proceeding unless all parties to the proceeding consent to them doing so.

- (4) A Tribunal member who conducts a review under the Public Sector Act 2009 may commence the review by seeing whether some form of conciliated outcome can be achieved but must conduct any discussions concerning a conciliated outcome in the presence of all parties or their representatives.
- (5) A Tribunal member who proceeds under sub-rule (4) is not precluded from conducting a review if a conciliated outcome is not able to be achieved.
- (6) A Presidential member who presides over a pre-hearing conference or settlement conference in relation to a proceeding may have regard to a s43(13) memorandum but must not then hear and determine the proceeding unless all parties to the proceeding consent to the Presidential member doing so.
- (7) Sub-rule (5) does not preclude a Presidential member from making orders, giving directions and deciding interlocutory disputes prior to the hearing and determination of a proceeding.
- (8) A document which contains a summary of the nature of each dispute, the matters remaining in issue and the positions of the parties but which does not contain any assessment of the merits made by a Commissioner under s 43(13)(a) of the SAET Act may be provided to and considered by a Presidential member, and if it is, does not preclude the Presidential member from hearing the proceeding.

#### **49. Consequences of failing to properly participate in conciliation**

- (1) Where a party is not ready to proceed at an initial directions hearing or a compulsory conciliation conference without good reason, the Commissioner with conduct of the matter may refer the matter to a Presidential member for directions, and before doing so, may order:
  - (a) that some or all of the costs between the party's professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;
  - (b) that a party's representative pay to his or her client some or all of the costs which his or her client has been ordered to pay to any party;
  - (c) that a party's professional representative pay some or all of the costs of any other party other than his or her client.

#### **50. Recording offers made at or after conciliation**

If a party wishes to record an offer made to settle a dispute at or after a compulsory conciliation conference, it must provide a written copy of the offer to the relevant Commissioner and must comply with any relevant Practice Direction in that regard.

### **PART 10 - Pre-hearing conferences**

#### **51. Directions and orders at a pre-hearing conference**

At a pre-hearing conference or at any other time during a proceeding a Presidential member may make such directions or orders necessary to achieve the fair and expeditious resolution of the proceeding, including but not limited to the following subjects:

- (a) identifying and narrowing the issues in dispute by document or otherwise;
- (b) giving and responding to particulars;
- (c) detailing the manner and sufficiency of service;
- (d) disclosure, inspection and production of documents;

- (e) joinder of parties;
- (f) enlarging the scope of proceedings;
- (g) requiring the provision of a Statement of Facts, Issues and Contentions or ordering the provision of pleadings if considered appropriate;
- (h) consolidating or splitting proceedings;
- (i) inspecting property, real or otherwise;
- (j) ordering that evidence be given by affidavit;
- (k) expert evidence and Tribunal experts;
- (l) disclosure and exchange of expert reports;
- (m) the number and order of expert witnesses;
- (n) requiring that the parties engage in settlement negotiations independently of the Tribunal;
- (o) the attendance of the parties, or any other person, at any conference;
- (p) referring a proceeding, or any aspect of or in a proceeding, to mediation;
- (q) providing for and limiting the extent of written submissions;
- (r) taking evidence and receiving submissions by electronic or other means that the Tribunal considers appropriate;
- (s) staying a proceeding;
- (t) dismissing or striking out a proceeding, or part of a proceeding;
- (u) adjourning a proceeding;
- (v) granting summary relief;
- (w) subject to the Rules and to any provision in a relevant Act, referring a proceeding to a Tribunal member who is not a Presidential member to be heard and determined, as a summary matter or otherwise;
- (x) determining the place, date, time and mode of any hearing;
- (y) determining costs, both as to liability and quantum;
- (z) any other matter that the Tribunal considers appropriate.

## **52. Conduct of Hearings**

- (1) A Tribunal member may at any time by direction –
  - (a) provide directions and make orders as to the way in which evidence is to be put before the Tribunal;
  - (b) limit the time to be taken in examining, cross-examining or re-examining a witness;
  - (c) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;
  - (d) limit the time to be taken in making any oral submission;
  - (e) limit the time to be taken by a party in presenting its case;
  - (f) limit the time to be taken by the hearing;
  - (g) amend any such limitation.

- (2) In deciding whether to make a direction under this rule, a Tribunal member shall have regard to the following matters in addition to any other matters that may be relevant –
- (a) the time-limited for a hearing must be reasonable; and
  - (b) any such direction must not detract from the principle that each party is entitled to a fair hearing; and
  - (c) the complexity or simplicity of the case; and
  - (d) the number of witnesses to be called by the parties;
  - (e) the volume and character of the evidence to be led;
  - (f) the state of the Tribunal lists; and
  - (g) the time expected to be taken for the trial; and
  - (h) the importance of the issues in the case as a whole.

## **PART 11 - Mediation**

### **53. Mediation under section 46 conducted outside the Tribunal**

- (1) Where mediation is to be conducted under s46 of the SAET Act by a person who is not a registrar or a member of the Tribunal, a registrar, no later than 7 days prior to the commencement of the mediation, must give a notice to the person specified as the mediator by the Tribunal and the parties to the mediation stating:
- (a) when, where and by whom the mediation is to be conducted; and
  - (b) the responsibilities of the mediator and the parties prior to, during and after the mediation.
- (2) The person specified to conduct the mediation must conduct it in accordance with recognised ethical and professional standards for mediators.
- (3) If the mediator is not a registrar or a member of the Tribunal, a party to the mediation may be directed by the Tribunal to pay or contribute to the costs of the mediation.

### **54. Mediation under section 46 conducted by the Tribunal**

Where mediation is to be conducted under s46 of the SAET Act by the Tribunal, the Tribunal will consult with the parties to make arrangements and establish protocols for the conduct of the mediation.

## **PART 12 - Disclosure of documents**

### **55. Disclosure and production of documents**

- (1) Unless a relevant Act provides otherwise, each party must disclose the documents that are, or have been, in the party's possession and are directly relevant to any material issue in a proceeding.
- (2) Unless a relevant Act provides otherwise, the Tribunal may at any time, including during the course of hearing a proceeding, order a party or any other person to disclose in the approved form and produce to the Tribunal and to other parties to the proceeding, any documents which are, or have been, in the possession of that person that are directly relevant to a material issue in the proceeding.
- (3) Where a person is required to disclose or produce documents of direct relevance to any material issue in a proceeding but discloses or produces documents which are not directly relevant, an adverse order for costs, may be made against the

person reflecting the additional time and expense to which the other parties have been put by reason of the unnecessary disclosure or production, or an order may be made for such other penalty as the Tribunal sees fit to impose having regard to the circumstances of the matter.

- (4) A person with a relevant interest may object to production of a document being made on the grounds of privilege, or that the document should not be produced for some other reason, and the Tribunal may excuse the person who has made disclosure of the document from the need to produce the document or the relevant part of the document to the Tribunal or any party.
- (5) In proceedings under the Return to Work Act 2014, in relation to evidence which comprises still or moving images of a worker taken without his or her knowledge or consent, the Tribunal may order that such evidence be disclosed and produced to the other parties to the dispute, but may do so only if:
  - (a) the disclosure and production is by consent; or
  - (b) the evidence has previously been produced to the worker's treating medical expert; or
  - (c) the decision under review relies on a medical opinion that is wholly or predominantly based upon the evidence; or
  - (d) the Tribunal is satisfied that, in the interests of justice, there are good reasons that justify the disclosure and production of the evidence.
- (6) Where in proceedings under the Return to Work Act a party is in possession of evidentiary material the disclosure of which could prejudice the investigation of a suspected offence, and the party seeks to not disclose the material on that basis, the party can make an ex-parte application to be exempted from compliance with s104(3) of the Return to Work Act and such application will be heard by a Presidential member of the Tribunal.

(Rule 55(7) varied by South Australian Tribunal (Amendment No. 1) Rules 2018)

- (7) Where an order is made under sub-rule (6), the Presidential member may make such further or incidental orders as are thought fair and appropriate in the circumstances, including but not limited to, delaying or adjourning the hearing of any compulsory conciliation conference or imposing a time limit on any order made under sub-rule (6).
- (8) A person subject to an order under this rule who is not a party to proceedings before the Tribunal is entitled, subject to any contrary order of the Tribunal, to reasonable compensation from the applicant for the time and expense involved in complying with the order, such compensation to be as fixed by agreement between the person and the applicant or as ordered by the Tribunal.
- (9) For the purposes of this rule, a person is taken to be in possession of a document if—
  - (a) the document is in the person's custody or control; or
  - (b) it lies within the person's power to obtain immediate possession of the document or to control its disposition (whether or not the power is one that would be recognised at law or in equity).

## **PART 13 - Summonses**

### **56. Form of Summonses**

- (1) A summons issued to a person under s33 of the SAET Act must be issued in the approved form.

- (2) Leave of the Tribunal to issue a summons is not required unless the summons is for medical records in proceedings under the Return to Work Act 2014.
- (3) If there is any conflict between a rule in this Part and a rule concerning a summons for medical records in proceedings under the Return to Work Act 2014 in Part 22 E of the Rules, the rule in Part 22 E is to prevail to the extent of any inconsistency.

#### **57. Complying with Summonses**

- (1) Subject to this Part, unless he or she has a lawful excuse for not complying, the person named in the summons must comply with that summons and in particular:
  - (a) in the case of a summons to attend and give evidence, he or she must come to the Tribunal to give evidence on the date and at the time specified in the summons and remain until excused by the Tribunal; and
  - (b) in the case of a summons to produce documents or other things, he or she must, in accordance with the terms of the specific order made, either:
    - (i) attend and produce the documents or other things to the Tribunal at the place and by the date and time specified in the summons; or
    - (ii) send the summons or a copy of the summons and the documents or other things to a registrar at the place specified in the summons so that they arrive by the date specified in the summons, or no later than 14 days from receipt of the summons if there is no date specified.
- (2) With the permission of a registrar, the date for an attendance or for the production of things required by a summons may be varied to a later date by the person who applied for the summons by giving notice of the later date to the summonsed party. Such notice will be taken to vary the time to attend or produce things to the later date.
- (3) Unless a summons specifically requires the production of the original or a certified copy of a document, a copy of the document required by the summons, including an electronic copy, will satisfy the summons.

#### **58. Objections to Summonses**

- (1) If the person a summons is directed to objects to complying with the summons or if another person affected by the summons objects to the summons being complied with, he or she must try to resolve the objection with the party who applied for the summons to be issued before the time for compliance.
- (2) If the objector is unable to resolve the matter informally, the objector must, before the time for compliance:
  - (a) in writing inform a registrar and the party who applied for the summons of the basis for the objection; and
  - (b) unless directed to do otherwise by the Tribunal, attend the Tribunal on the date for compliance to explain the basis for the objection.
- (3) Taking objection to a summons does not relieve the party making the objection from complying with a summons.
- (4) Unless an objection to a summons is dealt with under sub-rule (2) before the date for compliance, any document production is objected to is to be provided to a registrar with the objection clearly stated in writing or advised of by the objector in person if the documents are delivered personally.

- (5) A registrar is to consider any objection to a summonsed document and rule on the objection or refer the matter to a Presidential member to be dealt with.
- (6) The Tribunal may determine that objections that cannot be resolved by discussion and agreement will be referred to a conference with the persons concerned or to a registrar or a member of the Tribunal for decision.
- (7) A registrar is expressly authorised to constitute the Tribunal for the purposes of this rule.

#### **59. Access to and use of documents and other things**

- (1) In the case of a summons to produce documents or other things, if on the date for compliance no person objects to any party having access to the documents or other things, a registrar will make directions about access.
- (2) The standard access direction is for all parties to have electronic access to the documents or other things so that all parties can look at and, if necessary, obtain a copy of the documents or look at the other things produced.
- (3) If any person believes there may be grounds for objecting to one or more parties having access to the documents, that person can object to the parties being given access or can ask for 'first access' to the documents in order to check what the documents contain. If 'first access' is given to a person, that person will be able to look at the documents and decide whether to object to a party or parties having access to some or all of the documents.
- (4) If the documents or other things are privileged, confidential or should not be disclosed for some other reason, a person with a relevant interest may object to access being given and the Tribunal may restrict or prohibit access to those documents or other things.

#### **60. Allowances and Expenses of Complying with Summonses**

- (1) A party who applied for a summons to be issued will be liable to pay:
  - (a) reasonable witness allowances and expenses to the person named in the summons; and
  - (b) if other loss or expense is incurred in complying with a summons, a reasonable amount for that loss or expense.
- (2) If a summons to attend and give evidence is issued on the application of a party, the person named in the summons need not comply with the requirements of the summons unless the party pays the person his or her reasonable witness allowances and expenses and other reasonable costs of complying with the summons a reasonable time before attendance is required.
- (3) The amount to be paid for allowances, expenses or losses is either as agreed between the person named in the summons and the party who applied for the summons or, if they cannot agree, as determined by the Tribunal.

### **PART 14 - Expert evidence**

#### **61. Application of Part**

- (1) Subject to the Rules regarding the evidence of independent medical advisers appointed under s118 of the Return to Work Act 2014, the provisions of this Part apply whenever a party proposes to provide the Tribunal with evidence from an expert witness in any proceedings, including a report obtained from a health practitioner as defined by the Return to Work Act 2014.

- (2) An expert report that complies with this Part will be taken to be the evidence of the expert. The author of the report may only be called to give oral evidence at a hearing with permission of the Tribunal. Oral examination in chief of the author of an expert report who is required for cross examination may be permitted where good reason to do so exists and does not give rise to procedural unfairness to another party.

## **62. Content of expert reports**

- (1) If a party proposes to rely on expert evidence in any matter, the party must seek a written report from the expert, which must:
  - (a) set out the expert's qualifications to make the report;
  - (b) set out the facts and factual assumptions on which the report is based;
  - (c) identify any documentary materials on which the report is based;
  - (d) distinguish between objectively verifiable facts and matters of opinion that cannot be (or have not been) objectively verified;
  - (e) set out the reasoning of the expert leading from the facts and assumptions to the expert's opinion on the questions asked;
  - (f) set out the expert's opinion on the questions asked;
  - (g) be provided on the understanding and acknowledgement that the expert's primary duty is to be truthful and accurate to the Tribunal rather than to serve the interests of a party or parties;
  - (h) make reference to this rule; and
  - (i) comply with any requirements imposed by any Practice Directions.

## **63. Filing and serving copies of expert reports**

- (1) Subject to this rule, an expert report on which a party intends to rely in proceedings must be filed in the Tribunal, and a copy served on each other party along with a copy of the commissioning letter, within 7 days of the report being provided to the party by the expert and no less than 14 days prior to any hearing of the proceedings.
- (2) Where a pre-hearing conference is to be held under s45 of the SAET Act, any expert report upon which a party intends to rely in the proceedings must be filed in the Tribunal, and a copy served on each other party no later than 3 business days prior to the conference.
- (3) Where a party proposes to obtain an updated report from an expert prior to a hearing, the report must be provided to any other party by prior to the hearing compliance or readiness conference.

## **64. Special power in relation to expert evidence**

- (1) The Tribunal may:
  - (a) direct that the evidence of an expert witness be deferred until all (non-expert) factual evidence has been taken; or
  - (b) ask an expert witness to review the (non-expert) factual evidence and to state, by affidavit or in oral evidence, whether the witness wishes to modify an opinion earlier expressed in the light of the evidence or a particular part of the evidence.

## **65. Conferences, etc, of experts**

- (1) If two or more expert witnesses provide reports about the same, or a similar, question, the Tribunal may, on its own initiative or at the request of a party, give one or more of the following directions:
  - (a) that the expert witnesses confer with each other;
  - (b) that the expert witnesses produce for use by the Tribunal a document identifying:
    - (c) the matters and issues on which they are in agreement; and
    - (d) the matters and issues on which they differ;
  - (e) that an expert witness be asked to review the opinion of another expert and to state by a report whether the witness wishes to modify an earlier opinion he or she provided in light of the opinion of the other expert;
  - (f) that the evidence of two or more expert witnesses be taken in a particular sequence or with the experts together, each being asked in turn to answer, questions relevant to the matter put by the Tribunal or by the parties or by both.

## **66. Limit on number of experts**

- (1) Except with the permission of the Tribunal, a party may not rely on more than 3 experts of any kind in a proceeding or proceedings which are to be heard at the same time.
- (2) Except with the permission of the Tribunal, a party may not rely on more than 1 expert witness, including a health practitioner as defined by the Return to Work Act 2014, in the same field of expertise. In the case of a health practitioner who is medically qualified, this means a person qualified to practice in a particular area or specialty of medicine or surgery.

## **67. Shadow experts**

- (1) A shadow is an expert who –
  - (a) is engaged to assist with the preparation or presentation of a party's case but not on the basis that the expert will, or may, give evidence at the trial; and
  - (b) has not previously been engaged in some other capacity to give advice or an opinion in relation to the party's case or any aspect of it.
- (2) An expert will not be regarded as a shadow expert unless, at or before the time the expert is engaged, the expert gives a certificate, in an approved form, certifying that—
  - (a) the expert understands that it is not his or her role to provide evidence at the trial; and
  - (b) the expert has not been previously engaged in any other capacity to give advice or an opinion in relation to the party's case or any aspect of it.
- (3) Evidence of a shadow expert is not admissible at the trial unless the Tribunal determines that there are special reasons to admit the evidence.
- (4) If a party engages a shadow expert, the party must—
  - (a) notify the other parties of—
    - (i) the engagement; and
    - (ii) the date of the engagement; and

- (iii) the name, address and qualifications of the relevant expert; and
- (b) serve copies of the expert's certificate under sub-rule (2) on the other parties.
- (5) The notification must be given—
  - (a) if the engagement takes effect before the time for disclosing expert reports expires—before that time expires;
  - (b) in any other case—as soon as practicable after the engagement takes effect.

## **PART 15 – Supplementary panels and referrals to experts or special referees**

### **68. Supplementary panels and members**

In proceedings under legislation permitting the Tribunal to sit with supplementary panel members, the President of the Tribunal will generally determine that the Tribunal will sit with such members if requested to do so by one or more of the parties, unless the President is satisfied that it would be of no advantage for the Tribunal to sit with supplementary panel members.

### **69. Experts and special referees**

The remaining rules in this Part apply to the referral of a question by the Tribunal to an expert under s35 of the SAET Act or to a special referee under s60 of the SAET Act.

### **70. Referral on Tribunal's initiative**

If the Tribunal proposes to appoint an expert or special referee on its own initiative, the Tribunal will first obtain the views of the parties in writing or at a directions hearing.

### **71. Referral at request of the parties**

- (1) If the parties jointly seek the referral of a question to an expert or to a special referee, the parties must apply in the approved form for appropriate directions to be made by consent.
- (2) An application for directions under this rule must contain:
  - (a) the name of the proposed expert or special referee, details of his or her expertise, and confirmation that he or she has agreed to accept the referral; and
  - (b) the questions to be considered or determined, or the task to be performed, by the expert or special referee; and
  - (c) the date by which any documents (which must be clearly identified in the application) are to be provided to the expert or special referee and by whom they are to be provided; and
  - (d) the date by which the expert or special referee is to complete any report or determination.
- (3) Following receipt of the application for directions, the Tribunal may make an order referring a question to the expert or special referee, or may refer the application to a directions hearing for decision.
- (4) The Tribunal may decline to refer a question to an expert or special referee if the terms of the referral appear to be outside the proposed expert or special referee's expertise or for such other reason as the Tribunal thinks fit.

## **PART 16 - Costs**

### **72. Awarding and assessing costs**

- (1) In any matter where a determination of the amount of the costs of a party is required, the following principles must be adopted:
  - (a) parties are expected to take all steps necessary to consolidate all issues in dispute and all proceedings before the Tribunal to avoid multiple hearings;
  - (b) the type and amount of work performed will be measured by what is considered to be reasonable by a prudent and properly advised, but not overly cautious litigant;
  - (c) any costs payable to an officer or employee of an industrial association are to be assessed as the Tribunal considers appropriate.
- (2) A registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this rule.

## **PART 17 - Parties, Representation of parties and assistance to other persons**

### **73. Trusts**

- (1) A trustee may bring or defend proceedings in the name of the trust.
- (2) Proceedings to which this rule applies will be taken to have been commenced by or against all the trustees of the trust.
- (3) A trustee that brings an action in the name of the trust must have the authorisation of all of the trustees to bring the action and must file in the Tribunal with the initiating application a list of the trustees of the trust at the time the cause of action is alleged to have arisen.
- (4) A trustee that defends proceedings in the name of the trust must, on taking the first step in the action, file in the Tribunal a list setting out the names and addresses of the persons who were trustees of the trust at the time the cause of action is alleged to have arisen.

### **74. Procedure for joinder or disjoinder of a party**

- (1) The Tribunal may order that a person be removed as a party to proceedings before the Tribunal if the Tribunal is satisfied that it is in the interests of the efficient administration of justice to do so after all parties have had an opportunity to be heard on the question.
- (2) The Tribunal may make an order to join or remove a person as a party to proceedings:
  - (a) on its own initiative or on the application in the approved form of any person; and
  - (b) without notice to the person to whom the order relates.

### **75. Intervention in proceedings**

- (1) Where a person other than the Attorney-General seeks to intervene in proceedings under s50 of the SAET Act or any relevant Act, he or she must file an application in the approved form and serve a copy of the application on all other parties within 3 business days of the application being filed.
- (2) The Tribunal may grant the application to intervene on such terms as it considers just, and may vary or discharge any permission to intervene at any time.

- (3) An oral application for permission to intervene may be made at any time during the proceedings subject to the right of any party asserting disadvantage as a consequence of the application having the opportunity to consider his or her position and be heard by the Tribunal.
- (4) The Tribunal may continue to hear the matter whilst it is considering its response to the application to intervene.

#### **76. Representation of a company or the Crown**

- (1) The Tribunal may, on application on behalf of a company, give permission for representation of that company by a director or an officer of the company providing the Tribunal is satisfied that the person who is to represent the company has power to bind it in relation to the conduct of the proceeding.
- (2) The Tribunal may, on application on behalf of the Crown or an agency or instrumentality of the Crown, give permission for the appearance of that entity at a compulsory conciliation conference, settlement conference or mediation by a duly authorised employee or officer who is familiar with the matters in issue and who has the authority to bind that entity to any agreement.

#### **77. Ceasing to act without instructions from a party**

Where a representative of a party does not have instructions to cease acting for the party but seeks to do so, the representative must file an application to cease acting in the approved form along with a supporting affidavit which sets out the reasons why the representative seeks to cease to act, and must serve both documents on the party the representative seeks to cease acting for within 3 business days.

#### **78. Application for permission to represent a party**

- (1) In dealing with an application under s51(1)(c) of the SAET Act for permission to be granted to a person to represent a party to proceedings, the Tribunal is to have regard to:
  - (a) whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal; and
  - (b) whether the proposed representative will deal fairly and honestly with the Tribunal and other persons involved in the proceedings; and
  - (c) depending on the nature of the representative or his or her relationship to the party, whether the proposed representative has the consent of and sufficient authority to bind the party; and
  - (d) whether the proposed representative is likely to be a witness in the proceedings; and
  - (e) any other circumstances that it considers relevant.
- (2) In giving permission under s51(1)(c), the Tribunal may impose such conditions in relation to the representation as the Tribunal thinks fit.
- (3) Only a Presidential member of the Tribunal can give permission under s51(1)(c) of the SAET Act for representation by a person:
  - (a) who has been found guilty of professional misconduct (however described) or of another breach of professional or occupational standards, in disciplinary proceedings under a law of a State or Territory or the Commonwealth of Australia, or under the rules of a professional or occupational association or other body relevant to the person); or

- (b) a person who has been declared for the purposes of s 39 the Supreme Court Act 1935 to have persistently instituted vexatious proceedings, or
  - (c) a person who has committed contempt of the Tribunal or some other court and has not purged that contempt.
- (4) The Tribunal may revoke permission granted to a person to represent a party to proceedings if the Tribunal is satisfied that:
- (a) the party no longer consents to the person representing the party; or
  - (b) the person does not have the qualities referred to in this rule to act as the party's representative; or
  - (c) the party is, or has become, incapable of instructing the representative; or
  - (d) any other grounds are present that the Tribunal considers sufficient to justify the revocation.

**79. Application for assistance by a friend**

- (1) An application under s51(2) of the SAET Act for a person appearing before the Tribunal to be assisted by another person as a friend must be made on the approved form.
- (2) In dealing with the application, the Tribunal is to have regard to:
- (a) whether the assistance may promote the interests of the person; and
  - (b) whether the assistance may facilitate the just, quick and efficient resolution of the real issues in the proceedings; and
  - (c) whether the proposed assistant will deal fairly and honestly with the Tribunal and other persons involved in the proceedings; and
  - (d) any disability or other factor that impedes the person's capacity to fully participate in the hearing; and
  - (e) the nature and seriousness of the interests of the person that are affected by the proceedings; and
  - (f) any other circumstances that it considers relevant.
- (3) In granting permission for a person to provide assistance, the Tribunal may impose such conditions in relation to the assistance as the Tribunal thinks fit.
- (4) Only a Presidential member of the Tribunal can give permission for assistance by a person:
- (a) who has been found guilty of professional misconduct (however described) or of another breach of professional or occupational standards, in disciplinary proceedings under a law of a State or Territory or the Commonwealth of Australia, or under the rules of a professional or occupational association or other body relevant to the person); or
  - (b) a person who has been declared for the purposes of s 39 the Supreme Court Act 1935 to have persistently instituted vexatious proceedings, or
  - (c) a person who has committed contempt of the Tribunal or some other court and has not purged that contempt.
- (5) The Tribunal may revoke permission granted to a person to assist a party to proceedings at any time if the Tribunal is satisfied that there are grounds to do so.

## **80. Representation**

- (1) Where a party in a Return to Work Act matter seeks to be represented by an officer or employee of an industrial association acting in the course of employment with that industrial association, the Tribunal may request proof of the representative's standing including:
  - (a) a copy of the constitution of the industrial association;
  - (b) a copy of the contract of employment or other document which describes the legal relationship between the representative and the industrial association;
  - (c) any other document or thing reasonably required to assist the Tribunal to determine whether the representative comes within s 105 of the Return to Work Act.

## **PART 18 - Equal Opportunity Act**

### **81. Applications for exemption**

- (1) An application to the Tribunal for the grant of an exemption under the Equal Opportunity Act 1984 is to be made in the approved form and state the provision of the Act from which exemption is sought, the grounds upon which the application is made and the period for which exemption is sought.
- (2) An application to the Tribunal for renewal or revocation of an exemption under the Equal Opportunity Act 1984 is to be made in the approved form.
- (3) On an application being filed in the Tribunal under this rule, a registrar must serve a copy of the application on the Commissioner for Equal Opportunity, who must advise the registrar in writing whether the Commissioner intends to appear and be heard on the application.
- (4) Subject to any contrary direction of the President, a registrar must cause a notice to be published on the Tribunal web site advising that an application for the grant of an exemption has been made, the terms of the application and the date, time and place of the hearing of the application.

### **82. Referral of complaints by the Commissioner for Equal Opportunity**

- (1) The Commissioner for Equal Opportunity may refer a complaint to the Tribunal for hearing and determination under s95B of the Equal Opportunity Act 1984 by filing a written notice of referral, in which case:
  - (a) within 3 business days of the filing of the notice of referral, a registrar will advise the person who lodged the complaint (complainant) along with the Commissioner for Equal Opportunity in writing that the referral has been filed and that the complainant is required to provide details of the complaint within 14 days;
  - (b) within 14 days of being notified by a registrar of the filing of the referral, the complainant must file in the Tribunal in the approved form details of the complaint, including:
    - (i) the name and address of the person against whom the complaint is brought (respondent);
    - (ii) a concise statement of the material facts relied on in respect of each allegation made by the complainant;
    - (iii) the remedy that the complainant seeks.

- (c) within 3 business days of the details of the complaint being filed in the Tribunal, a registrar must serve a copy on the respondent and the Commissioner for Equal Opportunity;
  - (d) within 21 days of being served with a copy of the details of the complaint, the respondent must file a response in the Tribunal in accordance with the Rules and serve a copy of the response on the complainant and the Commissioner for Equal Opportunity, including:
    - (i) the address for service of the respondent;
    - (ii) a concise statement of the response to each allegation and each material fact made by the complainant;
    - (iii) any legal defence the respondent relies upon.
- (2) The Commissioner for Equal Opportunity may lodge a complaint in the Tribunal for hearing and determination under s95D of the Equal Opportunity Act 1984 by filing a written notice of complaint as an initiating application.
  - (3) The parties to a referral or application made under this rule are required to attend a pre-hearing conference under s45 of the SAET Act. For the purposes of this sub-rule, the Commissioner for Equal Opportunity is not to be taken to be a party to a proceeding filed in the Tribunal under s95B of the Equal Opportunity Act 1984.

### **83. Costs in Equal Opportunity proceedings**

- (1) A party in whose favour the Tribunal makes an award of costs against another party in proceedings under the Equal Opportunity Act 1984 is entitled to:
  - (a) 90% of the costs (including counsel fees) that would have been payable on a party and party basis had the proceedings been proceedings in the Supreme Court of South Australia;
  - (b) full reimbursement of disbursements reasonably incurred in relation to the preparation and conduct of the proceedings; and
  - (c) witness fees.
- (2) A party will be entitled to be reimbursed for 1 junior counsel only unless the Tribunal otherwise orders or the Tribunal certifies the proceedings fit for senior counsel.

## **PART 19 - Fair Work Act**

### **A. Monetary Claims**

#### **84. Service of proceedings**

- (1) In any proceeding under s9 of the Fair Work Act 1994, the Tribunal is to serve the proceeding on a respondent.
- (2) In any proceeding under s10 of the Fair Work Act 1994, an applicant is to serve the proceeding on a respondent.

#### **85. Attendance at compulsory conciliation conference**

- (1) The parties to any monetary claim under s9 or s10 of the Fair Work Act 1994 must attend a compulsory conciliation conference under s43 of the SAET Act unless the party lives more than 50 kilometres from the Adelaide General Post Office.
- (2) Sub-rule (1) does not apply if a monetary claim is made on behalf of multiple applicants in which case one representative of the applicants and at least 1 applicant must attend the conference irrespective of where the applicants reside.

- (3) If an applicant fails to attend a compulsory conciliation conference or a subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.

## **B. Industrial Matters and Disputes**

### **86. Enterprise Agreements**

- (1) Parties seeking approval by the Tribunal of an enterprise agreement are to file a paper copy executed by or on behalf of all parties to the agreement, an electronic copy, and the application for approval in the approved form.
- (2) Where the Tribunal considers that the application for approval is capable of approval without proceeding to a formal hearing, a notice will be issued to the parties and their representatives (if any) to that effect and will be published on the Tribunal web site.
- (3) Where a notice is issued under this rule and a person who is eligible to intervene in any proceedings that might be conducted in relation to the matter wishes to be heard, that person must advise the Tribunal and the other parties in writing of their desire to be heard within the period specified in the notice.
- (4) Where written advice of a desire to be heard is provided under sub-rule (3), the application will proceed to a formal hearing in accordance with directions to be given by the Tribunal.
- (5) Except in the case of a provisional enterprise agreement, the employer parties to an enterprise agreement must, upon receipt, display a copy of any notice issued by the Tribunal in accordance with this rule, on a noticeboard at the relevant workplace and circulate the notice by electronic means (e.g. email) to which all the affected employees have access.

### **87. Applications for interpretation of an award or agreement**

- (1) An application for the interpretation of an award or an agreement is to be made in the approved form by any party bound by, or who claims to derive an interest in or claims a benefit from, the award or agreement.
- (2) The application must set out:
  - (a) the relevant facts relating to each clause of the award or agreement in relation to which an interpretation is sought and state the reasons for seeking the interpretation; and
  - (b) the particulars of all other parties who have or who may have an interest in the application.

### **88. Award Proceedings**

- (1) The Tribunal may make orders regarding service and/or publication of any application for variation or rescission of an award or an application for a new award.
- (2) The Registrar must settle all minutes of awards (including variations, rescissions and any orders affecting awards) made by any member of the Tribunal.
- (3) Subject to any order to the contrary made by the Tribunal, the Registrar must give to all interested parties reasonable notice of the date of the proposed settlement of the minutes of an award and hear submissions from any parties relating to the award.
- (4) Before final settlement of the award, a registrar must if requested by a party, or may otherwise on his or her own initiative, refer the matter to the member of the

Tribunal who heard and determined the matter for advice as to the proper form of the award.

- (5) A registrar must publish a notice on the Tribunal web site to advise of the making of a determination by the Tribunal in award proceedings within 7 days.

#### **89. Outworker remuneration claims**

A claim by an outworker for an amount payable by an apparent responsible contractor under s99G of the Fair Work Act 1994, and a claim by an apparent responsible contractor against a related employer for recovery of an amount paid to an outworker under s99H of that Act, will be made and dealt with for the purposes of the Rules as if it were a monetary claim under s9 of that Act.

#### **90. Unfair Dismissal proceedings**

- (1) The parties to unfair dismissal proceedings under the Fair Work Act 1994 must attend a compulsory conciliation conference under s43 of the SAET Act.
- (2) If the applicant fails to attend the conference or a subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.
- (3) If an applicant files an application under s106 of the Fair Work Act 1994 and in response to any clarification sought by the Tribunal regarding their intention to proceed, does not confirm such an intention within 10 days, the matter may be deemed to be discontinued without further notice.
- (4) Where an adjudicating authority under s 106 of the Fair Work Act 1994 or other relevant Act purports to refer a matter to the Tribunal pursuant to s106 of the Fair Work Act 1994, the proceedings will be commenced by the adjudicating authority filing a statement which sets out the nature of the matter and the parties said to be involved.

#### **91. Industrial disputes**

- (1) Where a party seeks the assistance of the Tribunal to resolve an alleged industrial dispute the party must notify that to the Tribunal in an approved form.
- (2) A party may make an oral request for assistance of the Tribunal under this rule if the matter is urgent and if so, the party must provide a registrar with the detail that would be required by the approved form and submit the approved form within 2 business days of making the oral application.
- (3) Immediately after giving notice under sub-rule (1) or (2), the party making the application shall serve the approved form on all other parties to the dispute.

### **C. Registered Agents**

#### **92. Application for Registration**

An application for registration as a registered agent under s26 of the Fair Work Act 1994 must be made in the approved form.

### **D. Registration of Associations - Locally Based Associations**

#### **93. Application for Registration**

- (1) An association wishing to obtain registration under Chapter 4, Part 2 of the Fair Work Act 1994 must file in the registry an application in the approved form together with a certified copy of the rules of the association and a statutory declaration by the president or secretary of the association in the approved form.
- (2) The members of the applicant association must have subscribed to or otherwise agreed to be bound by written rules constituting the association and regulating its affairs.

- (3) A majority of the members present and voting at a meeting of the association specially called under this rule must have resolved by simple majority that application be made for its registration under the Fair Work Act 1994. Notwithstanding any rule of the association to the contrary, 14 days' notice in writing must be given by the committee of management of the association by prepaid post to all members at their last known address or by advertisement in a manner approved by the Tribunal. Not less than 5% of the total number of the members entitled to attend and vote at a general meeting of the association under its rules will constitute a quorum.
- (4) In order to comply with the requirements of s124 of the Fair Work Act 1994, the rules of an association must:
- (a) specify:
    - (i) the name of the association;
    - (ii) the nature of its membership;
    - (iii) the purpose for which it is formed; and
  - (b) provide for the following matters in relation to the administration of the association:
    - (i) the mode by which and terms upon which members may be admitted or their membership will cease or be terminated;
    - (ii) the automatic termination of the membership of any member who ceases to be a person eligible for membership of the association;
    - (iii) the maintenance of a register of current members;
    - (iv) the constitution of a committee of management and the election, appointment and removal of its members;
    - (v) the powers and duties of the Committee of Management and the control of it by the members either in general meeting, or in district meetings or by a general governing body or otherwise;
    - (vi) the election and removal of officers and their respective powers and duties;
    - (vii) the maintenance of a register of officers;
    - (viii) the maintenance of a registered office and the hours during which it will be open to the public;
    - (ix) the control of the property and investment of the funds of the association, and the mode by which funds may be disbursed whether for ordinary and extraordinary purposes;
    - (x) the mode by which rules of the association may be rescinded, varied or added to;
    - (xi) the mode by which the association may be dissolved;
    - (xii) the calling of and procedure at general meetings;
    - (xiii) appointment of a registered company auditor who is not an officer or employee of the association.
- (5) The conditions set in sub-rules (2), (3) and (4) are the prescribed conditions for the purposes of s122(1) of the Fair Work Act 1994 and are to be met unless waived in accordance with sub-rule (6).
- (6) The following provisions apply to an application for waiver of a condition:

- (a) an association seeking waiver of a condition must apply in writing to the Tribunal specifying any prescribed condition in relation to which a waiver is sought.
  - (b) the Tribunal will exercise its power of waiver of any prescribed condition on such terms and conditions it considers proper.
  - (c) the Tribunal will sign and issue a written determination if a waiver is granted under this sub-rule. Compliance with the determination by an association will constitute compliance with prescribed conditions.
- (7) The rules of an association may also provide for any other matters not contrary to law.

**94. Alteration to rules of an association**

- (1) An application to register an addition or alteration to or a rescission of the rules of an association must be in an approved form.
- (2) On receipt of an application for alteration of rules, and if the Tribunal considers it necessary to do so, the Tribunal will cause a notice of the application to be published on the Tribunal web site.
- (3) If the Tribunal is satisfied that it is impracticable for an association to alter its rules in accordance with those rules, the Tribunal may approve an alteration on such terms as it considers appropriate upon application made to it by the association.

**95. Objections to Alteration to Rules**

- (1) An objection to a proposed alteration will be made, heard and determined as if it were an objection to registration under the Rules, with such modifications as may be necessary.
- (2) An objection under this rule must be made within 21 days of the publication of the notice required by s125 of the Fair Work Act 1994.

**96. Change of Name**

- (1) An application for a change of name of an association under s125(2) of the Fair Work Act 1994 must be made in the approved form.
- (2) The application must have the existing Certificate of Registration of the association attached to it unless the Tribunal waives such requirement on an application made in writing for waiver.

**97. Compliance with rules**

An application under s127(1) of the Fair Work Act 1994 by a member of a registered association or a person who has been expelled from membership of a registered association must be made in the approved form.

**98. Accounting Records**

For the purposes of s128 of the Fair Work Act 1994, an association must keep such accounting records as correctly record and explain the transactions of the association and the financial position of the association.

**99. Amalgamation of Associations**

- (1) An application to register a body comprised of amalgamating associations as a registered association under s129 of the Fair Work Act 1994 must be in the approved form accompanied by a copy of the applicant body's rules certified by its President and a statutory declaration of its President verifying the due observance of the procedure prescribed by s129.

- (2) A request for the Registrar to conduct a ballot under s129(4) of the Fair Work Act 1994 must be made in writing addressed to the Registrar and be signed by the requisite number of members.
- (3) A registered association must, at the request of the Registrar, furnish the Registrar with an up to date list of the members of the association with their most recent or last known address.
- (4) The Registrar will conduct a ballot using such forms and procedures as the Registrar sees fit.

#### **100. Deregistration of Associations**

An application for deregistration of an association is to be made in the approved form.

### **E. Registration of Associations - Federally Based Associations**

#### **101. Application for Registration**

- (1) An association seeking registration under Part 3 of Chapter 4 of the Fair Work Act 1994 must file in the registry:
  - (a) an application in the approved form;
  - (b) a copy of the rules of the association registered under the Fair Work (Registered Organisations) Act 2009 (Cth) (FW(RO) Act) certified by its president or secretary to be the current rules, and, in the case of an association with a South Australian branch or where a branch of an association registered under the FW(RO) Act seeks registration, proof that its rules comply with section 131(2) or (3) of the Fair Work Act 1994;
  - (c) a statutory declaration, in the approved form, by the president or secretary of the association stating:
    - (i) that a resolution was duly passed by the committee of management of the applicant association authorising the making of an application for registration under Part 3 of Chapter 4 of the Fair Work Act 1994, and the date on which the resolution was passed;
    - (ii) the full names, addresses and occupations of the officers of the association and the offices held by each of them.

#### **102. Change of Name**

- (1) Where an association registered under s134 of the Fair Work Act 1994 changes its name, the secretary of the association must notify the Registrar of the change in writing, providing evidence of the change, within 21 days.
- (2) On receipt of the notification, a registrar will cause all relevant records to be altered accordingly.

#### **103. Deregistration of Associations**

An application for deregistration of an organisation or a branch of an organisation is to be made in the approved form.

### **F. Registration of Associations - General**

#### **104. Objections to Registration**

- (1) An objection under s121 or s133 of the Fair Work Act 1994 must be in the approved form and be filed in the registry within 21 days after the publication of the notice required by s120(2)(a) or s132(2)(a) of the Fair Work Act 1994.

- (2) An objection must be accompanied by a written statement setting out briefly the facts upon which the objector relies in respect of each ground of objection.
- (3) An objector will be restricted to the grounds specified in the notice of objection unless the Tribunal permits otherwise on a further application made by the objector that sets out the objector's further reasons.
- (4) Within 7 days after a notice of objection is filed in the registry, the objector must serve a copy of the notice and of the written statement accompanying it on the association applying for registration.
- (5) The Tribunal will proceed to hear and determine the application and all objections to it, without limit to its power to adjourn the proceeding from time to time.

#### **105. Certificate of Registration**

- (1) A certificate of registration issued under s143(1) of the Fair Work Act 1994 will be in an approved form.
- (2) On registration of an association by the Tribunal under Chapter 4 Parts 2 or 3 of the Fair Work Act 1994 and on registration of alterations to the rules of a locally based association by the Tribunal under Division 3 of Part 2 of that Act, a registrar must make an entry in a register book kept for such purpose, or must make an electronic record.

#### **106. Change of Address**

- (1) Where an association changes the address of its registered office, the secretary of the association must, within 14 days of such change, notify a registrar in writing of the change of address.
- (2) On receipt of the notification, a registrar will cause all relevant records to be altered accordingly.

### **G. Associations - Conscientious Objection**

#### **107. Conscientious Objection**

Any certificate granted pursuant to s118 of the Fair Work Act 1994 must be in an approved form.

## **PART 20 – Fire and Emergency Services Act**

#### **108. Notice to Chief Officer**

A registrar must serve a copy of any initiating application on the chief officer of the South Australian Metropolitan Fire Service where the chief officer is not named on the application as a party.

## **PART 21 – Public Sector Act**

#### **109. Procedure**

- (1) A review under the Public Sector Act 2009 must be conducted as quickly, and with as little formality as proper consideration of the matter allows.
- (2) There is to be no compulsory conciliation conference and no pre-hearing conference as provided for by the SAET Act as part of a review under the Public Sector Act 2009.

- (3) A Tribunal member may explore alternative methods of resolving the subject matter of the review in the presence of both parties prior to hearing the review but will proceed to conduct the review if an agreed outcome cannot be reached.
- (4) The Tribunal must give a party to the proceedings before it reasonable notice of the time and place at which the Tribunal is to hear those proceedings.
- (5) If a party does not attend at the time and place fixed by the notice, the Tribunal may hear the proceeding in the absence of that party.

## **PART 22 - Return to Work Act**

### **A. Special jurisdiction to expedite decisions**

#### **110. Procedure to be followed**

- (1) An applicant who believes there has been undue delay in deciding a claim or other matter must complete and file in the registry an application to expedite a decision under s113 of the Return to Work Act 2014 in the approved form.
- (2) An application to expedite a decision must be accompanied by a copy of any relevant documents, including any prior correspondence from the applicant requesting that the claim be determined.
- (3) An application to expedite a decision must be referred to a Commissioner within 2 business days of being filed, and will be listed for hearing within 21 days of being filed, unless a Tribunal member orders otherwise.
- (4) On receipt of an application to expedite a decision, a Tribunal member will contact the parties to the application prior to any hearing to seek such details or materials he or she thinks necessary to understand or resolve the application, and will provide those details or materials to the other parties before any hearing.

### **B. Certain applications for Review**

#### **111. Average weekly earnings and reviews of weekly payments**

- (1) Where an application for review complains about a decision which set average weekly earnings by reference to s5 of the Return to Work Act 2014, and a review or reviews of weekly payments has or have been undertaken under s46 or s47 of the Return to Work Act 2014 prior to the application for review being filed, any and all such s46 or s47 reviews will also be taken to be the subject of the application for review.
- (2) In a matter to which this rule applies, if a party files an application for review in relation to both a decision which set average weekly earnings and any s 46 or s 47 review of that decision, the party will only be entitled to an award of costs for the application for review of the decision which set average weekly earnings.

### **C. Reconsideration - s102 Return to Work Act**

#### **112. Confirmation of a decision under review**

- (1) If a compensating authority confirms, under s102 of the Return to Work Act 2014, the decision under review, it must file in the registry a confirmation of decision in an approved form.
- (2) The confirmation of a decision under review is a response for the purposes of the Rules.

#### **113. Variation of a decision under review**

- (1) If a compensating authority varies the decision under review, either by way of altering it or by setting it aside, it must file in the registry a variation of disputed

decision in an approved form which complies with s102(3) of the Return to Work Act 2014.

- (2) The authority's variation of a decision under review is a response for the purposes of the Rules.
- (3) If a compensating authority varies a decision, the Tribunal will serve the variation of disputed decision on all parties (whether a Notice of Acting has been filed or not). The parties must respond within 14 days by an approved form.
- (4) If no party responds within 14 days, an order will be made by the Tribunal confirming the variation of disputed decision.
- (5) If more than 14 days have elapsed from the date a disputed decision is varied and the Tribunal has made an order confirming the variation of the disputed decision, any party that wishes to set aside that order must make an application to do so supported by an affidavit which explains the delay and must serve the application on any other party within 3 business days.

#### **114. Procedure when a varied decision is accepted**

If the party that has sought review of a decision accepts the variation of that decision made at reconsideration, he or she must advise the Tribunal accordingly on an approved form and request that the Tribunal make an order confirming the varied decision.

#### **115. Procedure when a varied decision is not accepted**

- (1) If the party that has sought review of a decision does not accept the variation of that decision made at reconsideration, he or she must advise the Tribunal within 14 days and at the initial directions hearing in any event.
- (2) If another interested party does not accept the variation of that decision made at reconsideration, he or she must advise the Tribunal within 14 days and at the initial directions hearing in any event.

#### **116. Extension of time for reconsideration**

- (1) Where a compensating authority seeks an extension of time in which to reconsider a decision under review pursuant to s102 of the Return to Work Act 2014, it must apply to the Tribunal on an approved form.
- (2) The application for extension of time may, at the discretion of the Registrar, be determined either with or without consultation with the parties.
- (3) If an extension of time for reconsideration is granted by the Registrar, the amended date on which the reconsideration is due will be the date on which a response is due under the Rules.

#### **117. Effect of a failure to reconsider a decision under review**

If a compensating authority fails to complete reconsideration of a decision under review within the time prescribed by the Act or in such further time as ordered by the Registrar, the decision under review will be taken to have been confirmed.

### **D. Independent Medical Advisers**

#### **118. IMA Guidelines**

The procedures for referring a medical question for assessment by an independent medical advisor (IMA), the conduct of any medical examination, the provision of a medical report, the payment for any such report and the giving of oral evidence by an IMA must be in accordance with the IMA Guidelines published by the Tribunal.

## **E. Summonses for medical records**

### **119. Procedure to be followed where medical records are summonsed**

- (1) In proceedings under the Return to Work Act 2014, a party must not issue a summons for production of medical notes, imaging, reports or other documents (“medical records”) concerning the medical history of a person without the permission of the Tribunal.
- (2) If the Tribunal grants permission to issue a summons for medical records under this rule the summons must be accompanied by payment of \$100 or such other amount as may be prescribed from time to time by a registrar for the purposes of this rule by way of cheque, money order or electronic funds transfer made payable or directed to the medical practice from whom the medical records are sought.
- (3) After a summons for medical records is issued, a registrar must give the person who the medical records relate to 7 days, or such lesser time as is ordered by a Tribunal member, to consider the content of the medical records before they are released to the party issuing the summons.
- (4) The party the medical records relate to may apply to the Tribunal to limit the extent of the disclosure or redact parts of the medical records if the person believes good grounds for making the application exist and those parts of the medical records over which non-disclosure or redaction is sought are not relevant to the proceeding.
- (5) A person making an application under sub-rule (4) must tell the other parties to the proceeding the application is being made but the application can be made on an ex-parte basis to a Presidential member and need not be served on the other parties.
- (6) When hearing an application under sub-rule (4) a Presidential member may have regard to all the medical records which have been produced in answer to the summons when considering the application and may order non-disclosure or redaction if the medical records are not relevant and if it is considered that confidentiality ought to be maintained.

## **F. Interlocutory Applications**

### **120. Applications to be supported by affidavit and procedure to be followed**

- (1) Any interlocutory application filed in proceedings under the Return to Work Act 2014 where a party is represented is to be accompanied by an affidavit which sets out the reason for the application and deposes to any facts relevant to the application.
- (2) Any response to an interlocutory application filed in proceedings under the Return to Work Act 2014 where a party is represented is to be accompanied by an affidavit which explains the basis of the response and deposes to any facts relevant to the response.
- (3) Subject to the discretion of a Presidential member, argument about an interlocutory application will ordinarily be dealt with on the papers and without oral argument.
- (4) In any case where sub-rule (3) applies, the parties will be given an opportunity to submit written outlines of argument in relation to any contested interlocutory issues and to file affidavit evidence if it is necessary to set out and seek to rely upon any facts.

## **G. Appeals**

### **121. Procedure for Appeals**

- (1) An appeal against a decision of the Tribunal in a Return to Work Act matter is to be filed within 14 days of orders being made in the proceeding.
- (2) Any cross appeal or notice of alternate contentions a respondent seeks to rely upon is to be filed within 14 days of being served with an appeal.
- (3) An appellant is to file and serve an outline of argument within 2 calendar months of filing an appeal.
- (4) Within 1 calendar month of being served with an appellant's outline of argument the respondent and any other party entitled to be heard on the appeal is to file and serve an outline of argument.
- (5) An outline of argument must not be longer than ten A4 pages in length unless leave to file and serve a longer outline is granted.
- (6) Any appeal, cross appeal, notice of alternate contentions or outline of argument is to be served on any other party within 3 business days of being filed.
- (7) A Presidential member may order that a further outline of argument be filed by any party on such terms and conditions as are considered appropriate.
- (8) A Practice Direction may prescribe the form, length or content required in any document filed or served under this rule.
- (9) A Practice Direction may prescribe who is to attend an appeal pre-hearing conference and the matters they are expected to address.

## **H. Approval of certain settlements**

### **122. Procedure where approval of a settlement is required**

- (1) Subject to s47(3) of the SAET Act and s191 of the Return to Work Act 2014, where the parties to proceedings seek an order of the Tribunal which requires the consent of the Return to Work Corporation of South Australia under s191 of the Return to Work Act 2014, the parties must advise the Tribunal member with conduct of the proceedings that such consent is required or has been given.
- (2) In the situation referred to in sub-rule (1), a Tribunal member must not make the order sought unless a Presidential member has approved the order.
- (3) A Presidential member acting under sub-rule (2) may order that an application for directions and supporting affidavit be filed and may issue such directions and adopt such procedures he or she considers appropriate.

### **123. Infants and persons under a legal disability**

- (1) Where a matter concerns the rights or obligations of an infant or a person under a legal disability, any settlement of the matter must be approved by a Presidential member of the Tribunal.
- (2) In a matter to which sub-rule (1) applies, a Presidential member may issue such directions and adopt such procedures he or she thinks appropriate including giving a direction that an opinion about the suitability of the settlement be obtained from independent legal counsel.

## **I. Costs**

### **124. Limit on costs able to be charged by a representative**

- (1) A representative of a party shall not charge excessive costs. Costs charged at greater than the Supreme Court Scale of costs as varied from time to time shall, unless there are exceptional circumstances, be regarded as excessive.

- (2) If a representative of a party proposes to charge for work performed in a proceeding before the Tribunal at a rate in excess of the Supreme Court Scale of costs, an ex-parte application for directions supported by an affidavit seeking dispensation from sub-rule (1) and explaining what the exceptional circumstances are must be filed in the registry.
- (3) A representative of a worker or registered employer must provide their client copies of this rule and of s 107 of the Return to Work Act 2014 within 7 days of commencing to act in respect of any proceeding under that Act.
- (4) If a party believes that their representative has caused costs:
  - (a) to be incurred improperly or without reasonable cause; or
  - (b) to be wasted by undue delay, negligence or by other misconduct or default;
  - (c) under s107(2) of the Return to Work Act 2014, the party is to advise a registrar of that in writing, and if the party does, the registrar shall refer the matter to a Presidential member to deal with the matter in accordance with s107 of the Return to Work Act 2014.
- (5) A registrar is authorised to inform workers generally of this rule and of the actions a worker may take if the worker believes that the amount of costs being charged is excessive or that an order under s 107 of the Return to Work Act 2014 should be made.
- (6) A proceeding under s107 of the Return to Work Act 2014 may be initiated by a party or by the Tribunal.
- (7) The requirements of sub-rules (3), (4), (5) and (6) do not apply to a dispute commenced before 1 July 2015.

**125. Limit on costs able to be claimed from another party**

- (1) Subject to s 106 of the Return to Work Act 2014, the costs of and incidental to any proceedings under the Return to Work Act 2014 before the Tribunal will be at the discretion of the Tribunal, both as to the liability to pay costs and the amount awarded.
- (2) In general, and subject to the following rule, the Supreme Court Scale of Costs contained in Schedule 2 of the Supreme Court Civil Rules will form the basis of any claim for costs under this Part for any work performed by an applicant once a matter has been referred for hearing and determination.
- (3) To the extent of any inconsistency between the two, the SAET Notes to the Supreme Court Scale of Costs in the following rule are to be used for Return to Work Act 2014 matters rather than the Notes to the Supreme Court Scale of Costs contained in Schedule 2 of the Supreme Court Civil Rules.
- (4) A party will be entitled to be reimbursed for 1 junior counsel only unless the Tribunal otherwise orders or the Tribunal certifies the proceedings fit for senior counsel.
- (5) Where a Tribunal member is required to adjudicate the amount of a party's costs, he or she may do so themselves or may refer the adjudication to a registrar or to a person with special expertise in the evaluation and assessment of legal costs.
- (6) A registrar or a person with special expertise in the evaluation and assessment of legal costs may submit any question which may arise on an adjudication of costs to a Presidential member for an answer or for directions.
- (7) A party may initiate an application for adjudication of a discrete costs issue by an Application for Directions.

- (8) An adjudication of costs is commenced by the party who seeks the adjudication, filing and serving on the party against whom costs are claimed, a copy of the work in progress recorded in relation to the proceedings (WIP record) which records and details itemised services and the amounts claimed for those services.
- (9) A WIP record submitted for an adjudication of costs must be accompanied by a memorandum which details how the amount of costs claimed is arrived at by reference to the Supreme Court Scale of Costs in light of the SAET Note to the Supreme Court Scale of Costs.
- (10) A party seeking an adjudication of costs must not file an itemised schedule or bill of costs unless ordered to do so by the Tribunal.
- (11) Within 28 days of receipt of a WIP record, or within such longer period as may be allowed by the Tribunal, any party wishing to object to any part of the amount of costs claimed must file written particulars of their general and specific objections and must serve a copy of the written particulars of objection on the party claiming costs.
- (12) Upon being advised that written particulars of objection to the claim for costs have been filed and served, the Tribunal will list the matter for an adjudication a conference where the parties will have an opportunity to be heard, and the Tribunal may proceed to undertake the costs adjudication at that conference, or may, in its absolute discretion, adjourn the conference from time to time.
- (13) If the party against whom costs are claimed fails to file and serve written particulars of objections to a WIP record within 28 days of receiving the WIP record, the Tribunal may, on request, make an order for payment of costs as claimed.
- (14) Where it is impracticable for any reason to conduct an adjudication of costs by reference to a WIP record, the Tribunal may adopt the practice and procedure of the Supreme Court in relation to the determination of a costs dispute with any modifications thought necessary or the Tribunal may devise such other method of dealing with the costs adjudication as is appropriate to the matter in question.
- (15) Where an adjudication of costs has been undertaken by a registrar or a person with special expertise in legal costs, the registrar or costs expert must prepare and sign a certificate of recommendation advising of the result of the adjudication and provide it to the parties and to the referring Tribunal member. The referring member may adopt the recommendation with such modifications he or she thinks appropriate after granting the parties an opportunity to be heard.

#### **126. SAET Notes to the Supreme Court Scale of Costs**

- (1) The following notes are made in the context of s106(6) of the Return to Work Act 2014 which provides that the maximum award of costs to a party in proceedings under that Act is 85% under the relevant Supreme Court scale of costs. The notes also take account of the practices applied by the Supreme and District Courts when undertaking taxations of costs in those courts.
- (2) The fee for preparing a formal document is to be charged proportionately when a document has partly pre-printed text and no fee is to be charged for that part of the document which contains pre-printed text.
- (3) No fee is to be charged for re-drafting, editing or engrossing any document in SAET.
- (4) A document preparation fee is only to be charged for a document once and is not to be charged for any drafts that are able to be or have been electronically edited.
- (5) A full page contains 44 lines of 12 point font type. A quarter page contains 11 lines of 12 point font type. A quarter page is the minimum charging unit to be used. The

maximum margin sizes to be allowed are 4centimetres on the left and 2 centimetres on the right. Shorter documents or documents of less than a full page or a part thereof are to be charged at proportionately reduced rates.

- (6) Irrelevant information in affidavits of evidence, such as summaries of medical reports and opinions, is not chargeable.
- (7) Charging for the preparation of indices and books of employment records and medical notes will only be allowed in complex matters.
- (8) Perusal charges should be based on the reasonable time taken to read a document where doing so produces a lesser charge than calculating perusals on a per page or per folio basis by reference to the different rates allowed for perusals in the Supreme Court scale of costs.
- (9) When perusals are properly charged by the page, use of the higher rate provided for in the Supreme Court scale of costs for complex perusals should only be used where appropriate.
- (10) Standard medical reports are chargeable on a per page basis as an ordinary perusal, not as a complex perusal. Where a medical report is more than four pages in length it should be charged for on the basis of what is a reasonable amount of time taken to read the medical report.
- (11) Charging to peruse an email chain that has already been read is not allowed.
- (12) Where multiple emails or text messages that deal with the same issue over a period of up to three days are read, such items shall be treated as one document.
- (13) Any correspondence received from the Tribunal in a form which is usually sent to parties to advise of conference dates, adjournments and matters of that type should be charged at the lowest level of perusal provided for on the Supreme Court scale of costs. No fee for perusing documents already considered at compulsory conciliation will be allowed at the hearing and determination level of the Tribunal. Charges for perusing clinical notes will ordinarily be allowed on the basis of what is a reasonable time taken to read such notes.
- (14) Charges for photocopying bulk documents such as briefs, records, trial books and appeal books should not exceed commercially available printing rates plus reasonable administration costs. Unnecessary photocopying will be disallowed.
- (15) No fee will be allowed for charging a small part of a six minute time unit if it is considered unreasonable to do so.
- (16) No charge is allowed for a solicitor reviewing an existing file, irrespective of supervisory arrangements or a change of solicitor within a firm.
- (17) Legal research is not chargeable unless in the circumstances of the matter, it is reasonable and appropriate to allow for legal research to be charged.
- (18) If more than one six minute time unit is to be charged for a telephone call, the claim must be supported by evidence of the actual length of the telephone call and content of the call. No charge is allowed for leaving a telephone message.
- (19) A maximum of one hour will ordinarily be allowed for reading a written judgement of the Tribunal.
- (20) No charge is permitted for any attendance by a second solicitor. No charge is allowed for internal communications, such as memos to supervisors within a firm.
- (21) No additional charge beyond the time charged for a solicitor to attend a hearing and instruct counsel is allowed for any work performed by an instructing solicitor during the hearing of the matter such as sending or reading emails or making phone calls.

- (22) No filing fee will be allowed where a document could have been filed electronically.
- (23) Sending or receiving the same correspondence or document cannot be charged for more than once irrespective of whether both an electronic copy and a paper copy of the same document have been sent or received. No charge is permitted for perusing an email which forwards or attaches a scanned letter, application or document. Charges for prolix correspondence, like setting out lengthy histories to doctors that duplicate patient histories or attachments provided with the letter of request will be proportionately reduced.
- (24) Communications with counsel considered to be unnecessary are not chargeable. A solicitor able to conduct a matter on his or her own behalf, or under the supervision of an experienced practitioner, should be capable of attending to a broad range of actions in the ordinary course.
- (25) Standard parts of letters will be taken to be circular correspondence under item 16 of the Supreme Court scale of costs. Two examples are letters to a second or subsequent doctor setting out the same history or same questions in an earlier letter to a doctor and the provision of standard or pro-forma advice to clients regarding issues like dispute resolution procedures and substantive rights.
- (26) Charging for an attendance at any hearing or conference is not to include time taken to travel to or from the hearing or conference.
- (27) On an adjudication of costs, if the final award of costs is 20% or more below the amount of costs sought in the WIP record and any accompanying memorandum or letter, and is also 10% or less than the amount offered for costs, the party seeking the adjudication of costs shall not be entitled to any costs of or associated with the adjudication regardless of whether the final award is more than the amount offered by the other party.
- (28) GST is only to be added to an award of costs if the party claiming costs is not entitled to recover GST as an input tax credit.

## **J. Special applications and notices**

### **127. Applications under s 18 of the Return to Work Act 2014**

- (1) Written notice from a worker to an employer under s18(3)(b)(i) of the Return to Work Act 2014 must be in an approved form.
- (2) An application made under s 18(3) of the Return to Work Act 2014 will proceed to an initial directions hearing under s 43(1) of the SAET Act at which a date for a compulsory conciliation conference will be given unless a Tribunal member orders otherwise.

### **128. Applications under section 48(18) of the Return to Work Act 2014**

An application by an employer under s48(18) of the Return to Work Act 2014 for the Tribunal to direct the Corporation to carry out or expedite a review relating to weekly payments to a worker must be made by an application for directions under the Rules.

### **129. Schedule 1 Workers Rehabilitation and Compensation Act disputes**

Any matter which involves the application of clauses 2, 4 or 5 of Schedule 1 of the repealed Workers Rehabilitation and Compensation Act 1986 will immediately be referred to a Presidential member for such orders and directions he or she thinks fit having regard to the nature of the matter.

### **130. Notice to be heard**

- (1) If a party other than a party lodging an application for review or a compensating authority wishes to participate in proceedings where it has not lodged and does

not wish to lodge an application for review, it must file and serve upon all other parties to a proceeding a notice to be heard in the approved form.

- (2) If a party who has filed a notice to be heard fails to attend a conference or hearing without good cause and without providing an explanation for not attending prior to the commencement of the conference or hearing, a Tribunal member may proceed with the conference or hearing as if the notice to be heard had not been filed.
- (3) If a party who has filed a notice to be heard fails to attend 2 or more conferences or hearings after filing the notice, a Tribunal member may order that the notice be dismissed and may proceed with the conference or hearing as if the notice to be heard had not been filed.

## **PART 23 – Training and Skills Development Act**

### **131. Suspension under s64 of the Training and Skills Development Act**

- (1) Where an employer suspends an apprentice/trainee from employment under s64 of the Training and Skills Development Act 2008, the employer must notify the Tribunal immediately of the suspension by contacting a registrar by telephone, by personal attendance at the registry, by facsimile transmission or by email and provide details of the date and time of the suspension, the name and contact details of the apprentice/trainee suspended, the employer's legal or trading name and the employer's contact person's name and contact details.
- (2) The parties to a proceeding referred to in this rule must attend a compulsory conciliation conference under s43 of the SAET Act.
- (3) Immediately on receiving the notice in accordance with this rule, a registrar will set a date and time for the compulsory conciliation conference under s43 of the SAET Act and advise the parties and the Training and Skills Commission of the hearing details and if by reason of the applicant being an apprentice or trainee the matter needs to be listed urgently, the Tribunal will endeavour to accommodate any such need.
- (4) The employer must confirm the notice under this rule within 3 business days of the suspension by written notice filed at the Registry which states:
  - (a) the name, date of birth and the training contract identity number of the apprentice/trainee suspended and his/her contact details including mobile telephone number and email address where available;
  - (b) the employer's legal name as stated on the training contract, the trading name and the employer's contact persons' name and details including fax and telephone numbers and email addresses;
  - (c) a summary of the nature of the wilful and serious misconduct alleged; and
  - (d) the date and time of the suspension.
- (5) Unless otherwise directed by the President, a registrar will provide the apprentice/trainee and the Training and Skills Commission with a copy of the notice given under this rule.
- (6) Where an employer fails to attend the conference or any subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the employer had reasonable notice and a reasonable opportunity to be heard, revoke the suspension and order that the employer pay any remuneration or compensation to which the apprentice/trainee would, but for the suspension, have been entitled.

### **132. Disputes and Grievances**

- (1) An application under s65 of the Training and Skills Development Act 2008 is to be made on the approved form.
- (2) The parties to a proceeding referred to in this rule must attend a compulsory conciliation conference under s43 of the SAET Act.
- (3) If an applicant who files an application under this rule fails to attend a conference or subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.
- (4) Where an applicant files an application under this rule, and in response to any clarification sought by the Registrar or a member regarding their intention to proceed does not confirm such an intention within 10 days, the Registrar may deem the matter to be discontinued without further notice.

## **PART 24 – Work Health and Safety Act**

### **133. Form of WHS Entry Permit**

A registrar will determine the form to be used for a WHS Act entry permit.

### **134. Register of WHS Act Entry Permit Holders**

- (1) For the purposes of section 151 of the Work Health and Safety Act 2012, a registrar will publish a register of WHS Act entry permit holders on the Tribunal's website [www.saet.sa.gov.au](http://www.saet.sa.gov.au).
- (2) The register will contain the name of the permit holder and the union that a WHS entry permit holder represents, commencement and expiry dates (including suspension dates, if any), any conditions on the permit, and the date the register was last updated.

### **135. Application to Revoke a WHS Act Entry Permit and Disputes about Right of Entry**

- (1) Applications under s138 of the WHS Act to revoke a WHS Act entry permit and proceedings under s142 to deal with a dispute about a right of entry (including disputes under s128 about whether a request about entry is reasonable), shall be commenced in the approved form.
- (2) As soon as practicable after filing the application in the Tribunal, the applicant shall provide a copy of the application to the other parties nominated on the application form (or their representatives).
- (3) The President will assign matters under sub-rule (1) to a Tribunal member.
- (4) A Practice Direction may be issued to outline the steps to be taken and procedures to be adopted in the case of a dispute about a right of entry under the WHS Act 2012.

### **136. Surrender of WHS Act Entry Permits**

- (1) The person to whom a WHS Act entry permit is issued must return the permit to a registrar within 14 days of any of the following things happening:
  - (a) the permit is revoked or suspended; or
  - (b) the permit expires; or
  - (c) a condition is imposed on the permit.
- (2) A registrar may issue a replacement permit, including a permit which has had a condition imposed on it.

## **PART 25 – Industrial Referral Agreements**

### **137. Application of Part**

- (1) This Part applies to referral agreements entered into after its commencement.
- (2) Referral agreements entered into prior to the commencement of this Part will be dealt with by the Tribunal as if the Industrial Proceeding Rules 2010 were still in operation with such modifications as may be necessary.

### **138. Form and filing of a Referral Agreement**

- (1) A model referral agreement is set out in an approved form which the parties may use or adapt to their needs.
- (2) Parties may file a copy of a referral agreement with the Tribunal by forwarding a copy of that agreement to the Registrar with a written request that the document be received as a referral agreement between the parties for the period of its duration.

### **139. Seeking the assistance of the Tribunal**

- (1) A request for the assistance of the Tribunal must be in the approved form and be accompanied by a copy of the referral agreement unless one has already been filed under this Part.
- (2) In the event that a request for assistance is not signed by each party to the relevant referral agreement, the party making the request must serve a copy of it on each party to the referral agreement with an interest in the subject matter of the request for assistance.

### **140. Conduct of the dispute resolution**

- (1) Subject to any terms to the contrary in the referral agreement:
  - (a) conciliation and mediation will be conducted in private;
  - (b) arbitration may be conducted in public or in private;
  - (c) the dispute resolution proceedings will not be published in the Tribunal case list;
  - (d) any determination will not be published on the Tribunal website or distributed to subscribers;
  - (e) the parties are entitled to be represented in conciliation, mediation or arbitration;
  - (f) the information or documents given during the course of the dispute resolution must not be used or disclosed other than for the purpose of conducting dispute resolution;
  - (g) evidence of anything said or done during the dispute resolution is not admissible in related proceedings unless the parties agree; and
  - (h) the Tribunal will exercise such powers as may be expedient to resolve the dispute, including (with such modifications as may be necessary or determined by the Tribunal) the powers of the Tribunal during the conduct of conciliation conferences, mediation and arbitration and to make directions.
- (2) If the Tribunal resolves some or all of the matters in issue between the parties, a memorandum of the terms of settlement will be drafted by the parties which may be filed in the registry or may be confidential between the parties.

#### **141. Notices to parties**

- (1) If the member of the Tribunal with conduct of the request for assistance has formed a preliminary view that no action should be taken on the request or that action should be suspended or discontinued, the member will before making any determination to that effect:
  - (a) advise the parties in writing of the preliminary view;
  - (b) provide the parties with a reasonable opportunity to be heard by oral or written submissions on the issue;
- (2) The Tribunal will provide the parties with a written determination setting out the reasons for a determination made on the request for assistance.

### **PART 26 - Applications for internal review - s66 SAET Act**

#### **142. Section 66 SAET Act - Internal review of a decision of the Tribunal**

An initiating application for internal review under s66 of the SAET Act must be filed in the approved form and must include details of the Tribunal's decision, or the relevant part of the Tribunal's decision, that is sought to be reviewed.

### **PART 27 - Appeals under s67 SAET Act**

#### **143. Application of Part**

This Part applies to an appeal to the Full Bench of the Court under s67 of the SAET Act against a decision of the Tribunal.

#### **144. Time to appeal**

A person seeking to appeal must file the appeal in the Tribunal in the approved form within 1 month of the delivery of the decision appealed against unless a relevant Act or a rule in the Rules concerning a relevant Act provides otherwise.

#### **145. Appeal Books and Outlines of Argument**

- (1) Parties must comply with any Practice Direction relating to the content of and time for filing and providing copies of appeal books, lists of authorities and outlines of argument.
- (2) The Tribunal may decline to hear an appeal at the time listed if there is non-compliance with a relevant Practice Direction, and to the extent it is empowered to do so, the Tribunal may award the costs of any adjournment due to a failure to comply with sub-rule (1) against the defaulting party.

### **PART 28 - Miscellaneous**

#### **146. Notice of hearing**

Before the Tribunal hears any application, a registrar must give a notice of the time and place of the hearing to the applicant and to any other person who has been served with a copy of the application.

#### **147. Location of hearing**

- (1) If a party wishes the hearing and determination of a proceeding, or any step in a proceeding, to take place other than in the Tribunal's principal location in Adelaide, the party must make a specific request to the member of the Tribunal to whom the matter has been assigned, nominating that other place, and giving reasons why the matter should be heard there.

- (2) The member to whom a matter has been assigned will decide where the matter is to be heard.

#### **148. Provision of consent orders**

- (1) A matter which resolves by consent will be taken to have resolved on the date when in-principle settlement of the matter takes place.
- (2) Parties are required to advise the Tribunal in writing within 7 days of in-principle settlement taking place.
- (3) The Tribunal may cancel any conference, attendance or hearing scheduled for a matter after in-principle settlement of a proceeding has taken place.
- (4) Parties are required to provide draft orders to the Tribunal for sealing within 28 days of in-principle settlement taking place and the Tribunal may require parties to advise of the date on which in principle settlement took place.

#### **149. Procedure for identifying and dealing with summary matters**

- (1) Subject to the SAET Act, any relevant Act, the Rules and any Practice Direction, a Presidential member may direct that a particular matter, or a class of matters identified by a Practice Direction, be heard and determined as a summary matter.
- (2) A summary matter may be heard by such Tribunal member as directed by a Presidential member.
- (3) Parties must be prepared for a summary matter to be heard without delay.
- (4) When making orders in relation to the hearing of a summary matter, and without limiting the ambit of the directions which may be made, the Tribunal may direct:
  - (a) that the matter be heard by reference to available documentary evidence only;
  - (b) that the evidence of any witness be reduced to writing;
  - (c) some or all witnesses not be required for cross-examination;
  - (d) that the parties agree the facts, or some of them;
  - (e) that the parties reduce their contentions, and the factual and legal findings they say should be made, to writing.
  - (f) that the time available to each party to present its case be limited to a specified time.

#### **150. Disrupting Tribunal proceedings**

- (1) If a Tribunal member considers that a person has behaved in a manner contrary to s91(1) of the SAET Act, that member must refer the matter to the President or to a Presidential member to whom the President has delegated the power to deal with the matter.
- (2) The Presidential member to whom a matter is referred under this rule will consider the appropriate action to take in the circumstances, including whether or not to recommend that a charge be laid against the person.
- (3) Without limiting the generality of what order or orders can be made under this rule, a Presidential member may, after given an opportunity to all affected parties to be heard, stay or strike out proceedings if he or she considers it appropriate to do so, or may order the continuation of proceedings subject to such terms and conditions considered necessary.

## **151. Contempt of the Tribunal**

### **A. Contempt committed in the face of the Tribunal**

- (1) If a contempt is committed in the face of the Tribunal and it is necessary to deal urgently with it, the Tribunal sitting as the Court may—
  - (a) if the person alleged to have committed the contempt (the accused) is within the precincts of the Tribunal—order that the accused be taken into custody; or
  - (b) issue a warrant to have the accused arrested and brought before the Tribunal to be dealt with on a charge of contempt.
- (2) The Tribunal must formulate a written charge containing reasonable details of the alleged contempt and have the charge served on the accused when, or as soon as practicable after, the accused is taken into custody.

### **B. Tribunal initiated proceedings for contempt – other cases**

- (3) If the Tribunal decides on its own initiative to deal with a contempt of the Tribunal, a registrar may be required to formulate a written charge containing reasonable details of the alleged contempt.
- (4) A registrar will then issue a summons requiring the person alleged to have committed the contempt (the accused) to appear before the Tribunal at a nominated time and place to answer the charge.
- (5) The Tribunal may issue a warrant to have the accused arrested and brought before it to answer the charge if—
  - (a) there is reason to believe that the accused will not comply with a summons; or
  - (b) a summons has been issued and served but the accused has failed to appear in compliance with it.

### **C. Contempt proceedings by a party to proceedings**

- (6) A party to a proceeding who claims to have been prejudiced by a contempt of the Tribunal committed by another party or a witness or another person in relation to the proceeding (the accused) may apply to the Tribunal to have the accused charged with contempt.
- (7) An application under sub-rule (7)—
  - (a) must be made as an interlocutory application; and
  - (b) must include details of the alleged contempt.
- (8) An application under sub-rule (7) may be made without notice to the accused or other parties but the Tribunal may direct the applicant to give notice of the application to the accused or the parties (or both).
- (9) If a Presidential member of the Tribunal is satisfied on an application under sub-rule (7) that there are reasonable grounds to suspect the accused of the alleged contempt, the Tribunal may require a registrar to formulate a written charge containing reasonable details of the alleged contempt.
- (10) The Registrar will then issue a summons requiring the accused to appear before the Tribunal at a nominated time and place to answer the charge.
- (11) The Tribunal may issue a warrant to have the accused arrested and brought before it to answer the charge if—

- (a) there is reason to believe that the accused will not comply with a summons; or
- (b) a summons has been issued and served but the accused has failed to appear in compliance with it.

#### **D. Hearing a charge of contempt**

- (12) A charge of contempt is to be dealt with by the Tribunal sitting as the Court constituted by a single Presidential member except if the contempt is a contempt of the Full Tribunal in which case the Full Tribunal may itself deal with the charge.
- (13) The Registrar will have the carriage of the prosecution of a charge of contempt, and may retain solicitors and counsel for that purpose.
- (14) In relation to proceedings for contempt which were initiated by an application under sub-rule (7), the Tribunal may direct the applicant to indemnify the Registrar in respect of the costs incurred by the Registrar or ordered to be paid by the Registrar and this right of cost recovery is additional to that contained in sub-rule (19).
- (15) The Tribunal will deal with a charge of contempt as follows—
  - (a) the Tribunal will hear relevant evidence for and against the charge from the prosecutor and the accused;
  - (b) the Tribunal may, on its own initiative, call witnesses who may be able to give relevant evidence;
  - (c) at the conclusion of the evidence, the Tribunal will allow the prosecutor and the accused a reasonable opportunity to address it on the question whether the charge has been established;
  - (d) if, after hearing the evidence and representations from the prosecutor and the accused, the Tribunal is satisfied beyond reasonable doubt that the charge has been established, the Tribunal will find the accused guilty of the contempt;
  - (e) the Tribunal will, if it finds the accused guilty of the contempt, allow the prosecutor and the accused a reasonable opportunity to make submissions on penalty;
  - (f) the Tribunal will then determine and impose a penalty.
- (16) A witness called by the Tribunal may be cross-examined by the prosecutor and the accused.

#### **E. Punishment of contempt**

- (17) The Tribunal may punish a contempt by a fine or imprisonment (or both).
- (18) If the Tribunal imposes a fine, it may—
  - (a) fix the time for payment of the fine; and
  - (b) fix a term of imprisonment in default of payment of the fine.
- (19) The Tribunal may order a person who has been found guilty of a contempt to pay the costs of the proceedings for contempt.
- (20) The Tribunal may release a person who has been found guilty of a contempt on the person entering into an undertaking to the Tribunal to observe conditions determined by the Tribunal.
- (21) The Tribunal may, on its own initiative or on application by an interested person, cancel or reduce a penalty imposed for a contempt.

- (22) An order for the imposition of a penalty for a contempt, or for the cancellation of a penalty imposed for a contempt—
  - (a) may be made on conditions the Tribunal considers appropriate; and
  - (b) may be suspended on conditions the Tribunal considers appropriate.
- (23) The Tribunal may, on its own initiative or on application by the Registrar—
  - (a) cancel the release of a person who has been released under sub-rule (20) for breach of a condition of the undertaking; and
  - (b) issue a warrant to have the person arrested and brought before the Tribunal to be dealt with for the original contempt.
- (24) The Registrar, if so directed by the Tribunal, must make an application under sub-rule (23).

#### **152. Application to attend an examination by a health practitioner**

- (1) Subject to this rule, in any proceedings before the Tribunal in which the physical or mental condition of a person is a relevant issue and the person seeks a benefit or payment to which medical evidence may be relevant, another party may make application to the Tribunal under this rule seeking an order that the person submit to examination by a specified health practitioner at a specified time and place.
- (2) A party making an application under this rule must organise the examination, provide the person sought to be examined with reasonable notice of the examination and be responsible for any fee or charge associated with the examination.
- (3) A party making an application under this rule must, if requested by the person or their representative, pay to or on behalf of the person a reasonable sum to meet the travel or parking costs of a person attending the medical examination.
- (4) Where a person opposes an application made under this rule, or attends the examination but does not do or answer all things reasonably requested by the health practitioner to facilitate the examination, the Tribunal may, upon application by another party, stay the proceedings or make such other order or direction as is appropriate.

#### **153. Fees may be published**

- (1) The Registrar may from time to time by notice published in the SA Government Gazette, specify the amount of any fee payable for:
  - (a) filing any proceeding or document;
  - (b) being provided with transcript of any proceedings, whether electronically or by paper;
  - (c) the use in any proceedings of an interpreter;
  - (d) undertaking a search of any record held by the Tribunal;
  - (e) copying any documents;
  - (f) summoning any document, person or thing.
- (2) In any particular case, a registrar may direct that the whole or any part of fees otherwise payable under this rule, will not be charged, or if charged and paid, be returned.

#### **154. Paying money into the Tribunal**

- (1) All money paid into the Tribunal is to be paid into the SAET Fund established by the Registrar.

- (2) Money is to be paid out of the Fund either:
  - (a) by order of a Presidential member of the Tribunal; or
  - (b) upon the direction of the Registrar.
- (3) The Fund and any income it produces are to be invested by the Registrar as a common fund pursuant to s21 of the Public Finance and Audit Act 1987.
- (4) As soon as practicable after the last days of June and December in each year, the Registrar is to fix the rate of interest payable in respect of funds in the Tribunal for the preceding half-year and to credit interest to the common fund or any special fund at those times.
- (5) When money is paid out during any half-yearly period the rate of interest applicable to the previous half-year will apply unless the Registrar directs otherwise.
- (6) Interest accrues from day to day up to the date when payment out is made.

#### 155. Delegation by registrars

- (1) With the permission of the President, the Registrar may delegate to another member of the staff of the Tribunal a function of a registrar under the Rules.
- (2) The delegation:
  - (a) must be in writing; and
  - (b) may be conditional; and
  - (c) does not derogate from the ability of the registrar to act in any matter; and
  - (d) is revocable at will by the registrar.

## RULES HISTORY

Title	Commenced	Revoked
<i>South Australian Employment Tribunal Rules 2015</i>	1 July 2015 <a href="#">SA Government Gazette</a> : 18 June 2015 (No. 37, page 2918)	1 July 2017
<i>South Australian Employment Tribunal Rules 2017</i>	1 July 2017 SA Government Gazette:	
<i>South Australian Employment Tribunal Rules 2017</i>	Amendment no1 <a href="#">SA Government Gazette</a> : 6 February 2018 (No. 8, page 669)	Rule 11 revoked and substituted Rule 22(3) revoked and substituted Rule 55(7) amended