



South Australian
Employment
Tribunal
**Annual Report
2015-16**



SOUTH
AUSTRALIAN
EMPLOYMENT
TRIBUNAL

SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

The South Australian Employment Tribunal (SAET) is the dispute resolution forum for South Australia's Return to Work scheme. The Tribunal provides timely, fair and independent resolution of workers compensation matters and helps injured workers recover from injury and return to work.

SAET is established under section 5 of the *South Australian Employment Tribunal Act 2014*. It commenced operations on 1 July 2015. This is the first annual report of SAET.

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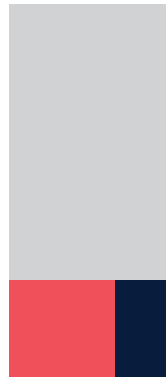
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The Honourable John Rau MP
Minister for Industrial Relations

Dear Minister for Industrial Relations,

In accordance with section 89 of the *South Australian Employment Tribunal Act 2014*, we have pleasure in submitting the South Australian Employment Tribunal Annual Report for the year ended 30 June 2016. This report has been prepared to reflect the requirements of Regulation 9 of the South Australian Employment Tribunal Regulations 2015.

Yours sincerely,

His Honour Senior Judge JP McCusker
President
South Australian Employment Tribunal

Leah McLay
Registrar
South Australian Employment Tribunal

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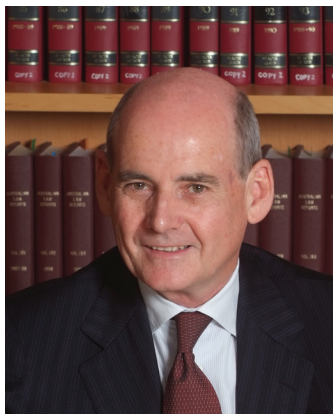
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PRESIDENT'S MESSAGE

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SAET was established under the *South Australian Employment Tribunal Act 2014* and commenced hearing workers compensation matters under the *Return to Work Act 2014* on 1 July 2015.

SAET has a different emphasis to previous dispute resolution models. The emphasis is expedition and economy while maintaining the highest judicial standards. It also emphasises resolving disputes by conciliation wherever appropriate. These objectives are to be met without unnecessary formality or technicality.

While SAET has commenced with workers compensation matters, it will shortly exercise jurisdiction over a number of other employment related areas. The Members of SAET are eager to meet this challenge. There is an impressive level of enthusiasm within the Tribunal for the task ahead.

It is important that Courts embrace change. That is, change for the better. Change is, in fact, going on around us all the time and the Courts must adapt accordingly.

I would like to take this opportunity to thank members and staff for their commitment.

A handwritten signature in black ink, which appears to read "JP McCusker". The signature is written in a cursive, flowing style.

His Honour Senior Judge JP McCusker
President South Australian Employment Tribunal

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REGISTRAR'S MESSAGE

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SAET's first year of operation was productive and successful. When we commenced on 1 July 2015, we were focused on delivering effective and efficient dispute resolution under the new *Return to Work Act 2014*.

In order to deliver on our objectives, we had to implement processes and practices that differed from those of our predecessor, the Workers Compensation Tribunal. Registry processes were redesigned to ensure rapid processing and allocation of applications. Conciliation Officers ensured that meaningful conciliation took place within a changed legislative framework that set time limits on conciliation. Presidential Members trialled and adopted new approaches to the management of cases at hearing and determination.

As a result of this commitment and dedication to the task from both Members and staff, 3829 disputes were resolved with the average time from lodgement to resolution at conciliation being nine weeks and 25 weeks at hearing and determination.

It is expected that new jurisdictions will shortly be conferred on SAET. A number of projects have been embarked on in preparation for that, and in order to continue delivering high quality dispute resolution outcomes.

A new case management system has been developed and will be implemented in the New Year. This will allow us to further streamline and improve our administrative functions, and will be the first step in moving paper files to an electronic filing system. The system will improve our service to parties and representatives by allowing for easier filing of applications and other documents via a purpose built portal. New committees have been established to monitor and continuously improve our performance and significant preparation for new jurisdictions is underway to ensure they are seamlessly integrated into SAET.

In 2016/17 we will continue to engage and consult with stakeholders as we shape South Australia's 'one stop shop' specialist employment tribunal. I would like to thank the dedicated Members and staff who have been instrumental in delivering the results presented in this report.

A handwritten signature in black ink, appearing to read 'Leah McLay', with a stylized flourish at the end.

Leah McLay, Registrar
South Australian Employment Tribunal

ABOUT SAET

SAET is South Australia's sole forum for dealing with workers compensation (Return to Work) matters. SAET strives to be accessible and responsive to the needs of parties, and is an integral part of the state's justice system.

SAET commenced hearing workers compensation matters on 1 July 2015. The creation of the Tribunal was more than a new way of resolving workers compensation disputes.

SAET's members are appointed by the Governor in Executive Council on the recommendation of the Minister. Members are appointed as either Presidential Members or Conciliation Officers.

The President is the Senior Judge of the Industrial Relations Court. Deputy Presidents must be a Judge of the Industrial Relations Court, or be eligible for appointment. They can be

appointed on a permanent or acting basis. Magistrates may also be designated as Members of the Tribunal. Conciliation Officers must be either a legal practitioner with at least five years standing, or have extensive knowledge, expertise or experience in a relevant area.

As at 30 June 2016, SAET has 18 Members, eight Deputy Presidents and 10 Conciliation Officers. The Registrar, who is also appointed by the Governor, assists the President with the administration of the Tribunal and the day-to-day case management. SAET has 29 staff who support the delivery of SAET services.

OUR OBJECTIVES

The Tribunal's objectives are set out in section 8 of the *South Australian Employment Tribunal Act 2014* (the Act):

The main objectives of the Tribunal in dealing with matters within its jurisdiction are:

- a. in the exercise of its jurisdiction, to promote the best principles of decision making, including –
 - I. independence in decision making; and
 - II. natural justice and procedural fairness; and
 - III. high quality, consistent decision making; and
 - IV. transparency and accountability in the exercise of statutory functions, powers and duties; and
- b. to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with special needs; and
- c. to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high quality processes and the use of mediation and alternative dispute resolution procedures wherever appropriate; and
- d. to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
- e. to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and
- f. to act with as little formality and technicality as possible, including by informing itself in such manner as the Tribunal thinks fit; and
- g. to be flexible in the way in which the Tribunal conducts its business and to adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

WHAT WE DO

SAET works with parties to resolve disputes through agreement at conciliation. If agreement can't be reached, the Tribunal makes a decision at a hearing. Matters dealt with by SAET include:

- > disputes about workers compensation claims
- > undue delays in making decisions on workers compensation claims
- > disputes about an employer providing suitable employment for a worker who has been incapacitated for work as a consequence of a work injury.

OUR GOVERNANCE

The principal law that governs our operations is the *South Australian Employment Tribunal Act 2014*. The SAET President is responsible for the management and administration of the Tribunal. A number of purpose-specific committees meet regularly to oversee critical business functions, provide clear decision-making processes and ensure compliance with SAET's obligations. These committees are governed by business rules that include

terms of reference, membership, meeting frequency, decision-making and reporting requirements.

Management of staff occurs through regular meetings of the management team comprising of the Registrar, Deputy Registrar, Manager of Conciliation, and the Team Leaders for the Registry and Associates.

SAET MEMBERS AND ADMINISTRATION

PRESIDENTIAL MEMBERS

President, Senior Judge
James Peter McCusker

Deputy President, Judge
Brian Gilchrist

Deputy President, Judge
Peter Hannon

Deputy President, Judge
Leonie Farrell

Deputy President, Mark Calligeros

Deputy President, Steven Dolphin

Deputy President, Michael Ardlie

Deputy President,
Stephen Lieschke

CONCILIATION OFFICERS

Manager, Anne Lindsay

Anthony Corrighan

John Palmer

Jennifer Russell

Darryl Willson

Andrew Neale

Lucy Byrt

Jodie Carrel

Melinda Doggett

Gina Nardone

ADMINISTRATION

Registrar, Leah McLay

Deputy Registrar, Anna Guthleben

Customer Relations Officers

Dispute Resolution Assistants

Associates

Corporate Services

HIGHLIGHTS



1 July 2015

> SAET opened doors



4,904

applications
successfully processed

> 71%

resolved at
conciliation

> 7%

resolved at hearing
and determination

TIMELINESS

average time from lodgement to
resolution at conciliation – **9 weeks**

average time from lodgement to
resolution at hearing and determination –
25 weeks

matters referred to conciliation
within **2 days** of lodgment

initial directions hearing within
3 weeks of lodgment

MODERNISING SERVICE DELIVERY



24 hour

turnaround for
processing applications



website launched

including online applications

STAKEHOLDER ENGAGEMENT



Members and the Registrar have actively engaged with a
range of stakeholders communicating **SAET's vision of speedy
and efficient justice**

INVESTING IN OUR PEOPLE



new Registry staff roles

to align with redesigned
Registry processes



new management team to

drive change and ensure our
workforce remains responsive
to process improvement

DELIVERING OUR SERVICES

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WHAT ARE OUR SERVICES?

SAET provides timely, fair and independent resolution of workers compensation disputes, resolving them through agreement at conciliation, mediation, or at a hearing conducted by a Presidential Member.

TYPES OF APPLICATIONS

The *Return to Work Act 2014* (RTW Act) allows for three types of applications to be dealt with by SAET.

REVIEWABLE DECISIONS

Applications concerning a reviewable decision (s97 RTW Act) are first brought to the attention of the compensating authority so that they can reconsider the decision and either confirm or vary the decision. If the applicant is dissatisfied with the result, the matter then goes to a compulsory conciliation conference. If the matter is not resolved at conciliation, it is then listed for hearing and determination. All applications for review are listed for an initial directions hearing within 21 days of lodgement.

EXPEDITED DECISIONS

Where a decision has been requested but not made in a timely manner, an application to expedite that decision

can be made (s113 RTW Act). If a worker or an employer believes that there has been undue delay in making a reviewable decision, they can apply to the Tribunal for the decision to be made, or for directions to be made to expedite the decision. All applications for expedited decisions are listed for hearing within 21 days.

SUITABLE EMPLOYMENT

If a worker with a compensable injury is not being provided with suitable employment duties by the pre-injury employer, then an application for SAET to order that suitable duties be provided may be made (s18 RTW Act). Such applications are currently heard at first instance by a Presidential Member who will make the appropriate orders given the history and subject matter of the application. In most matters an order for the parties to engage in conciliation is the most appropriate order. In others, a prompt trial listing is the most appropriate way for the matter to proceed.

SAET REGISTRY

The Registry provides the administrative functions of the Tribunal. It manages the lodgement of claims, applications, and forms. Other administrative functions include receiving all documents relating to proceedings

before the Tribunal and undertaking the various administrative actions required by the RTW Act, regulations and Rules.

CONCILIATION

Conciliation Officers lead the dispute resolution process through conciliation, moving from an initial directions hearing through to a compulsory conciliation conference, making all reasonable efforts to bring the parties in dispute to an agreement.

The purpose of conciliation is to achieve the resolution of the matter by a settlement between the parties, or if a settlement is not achievable, to further refine or narrow the issues in dispute.

On occasion, the Conciliation Officer will make a referral to an Independent Medical Adviser for an expert opinion on the medical evidence.

The most noticeable difference from the previous model is that conciliation is faster, and the Conciliation Officer is more involved from the beginning in assisting the parties to identify different options for resolution. Within a day or two of an application being lodged the Conciliation Officer lists the matter for an initial directions hearing.

The initial 21 day process runs concurrently with reconsideration of the dispute by the decision maker. That

means the first hearing in SAET occurs more quickly than it has in the past, and that some disputes will not need to go to a hearing because they will resolve during the reconsideration period.

At the initial directions hearing the Conciliation Officer takes an active role to identify, clarify and narrow the issues in dispute, and makes directions about what further information is needed to assist with its resolution. If the matter is not resolved at the initial hearing a conciliation conference is listed, usually within four weeks.

The new conciliation process is intended to involve one conciliation conference which all the parties and their representatives attend. The conciliation conference takes one to two hours, with a clear focus on resolving the dispute on that occasion.

If a matter does not resolve at the conciliation conference, the parties will spend time with the Conciliation Officer planning for the next stage of dispute resolution by identifying, clarifying and narrowing the issues in dispute. The Conciliation Officer will also assess the merits of the parties' arguments.

HEARING AND DETERMINATION

If a matter does not resolve at conciliation it will be referred to the hearing and determination stage of the Tribunal to be heard before a Presidential Member. Hearing and determination essentially has two phases – pre-trial and trial.

In the pre-trial phase a Presidential Member will conduct a pre-hearing conference in order to make an assessment of the merits of the matter, to seek to identify, clarify and narrow the issues in dispute and take steps to explore a possible settlement of the matter.

An initial pre-hearing conference will be listed for 30 minutes and heard by a Presidential Member. Matters that are unable to be resolved at conciliation are often able to be settled with the input of a Presidential Member. Also, if more extensive settlement negotiations are required, the Presidential Member may list the matter for a settlement conference. With the expertise and hands-on approach

of Presidential Members at such conferences, many negotiated settlements have been achieved.

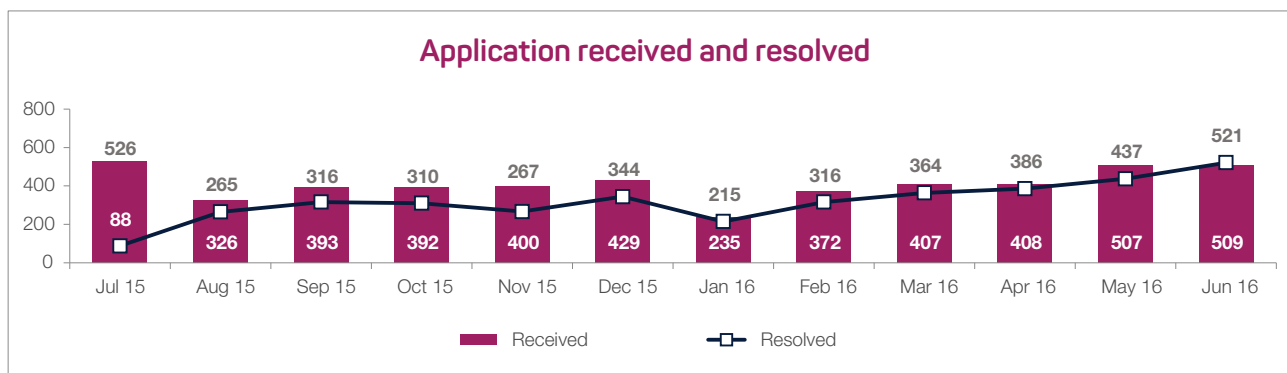
If a matter is not able to be settled with the assistance of a Presidential Member, trial orders will be made. Such orders make a matter ready for hearing where evidence will be called and submissions put in much the same way as in any other civil court. The Presidential Member who hears the trial is usually not the Presidential Member who case managed the matter in the pre-trial phase. After hearing all of the evidence and submissions, the Presidential Member produces a judgment.

All Presidential Members have in mind the need for speedy and efficient justice, and understand that expense and delay in workers compensation litigation are to be minimised where possible.

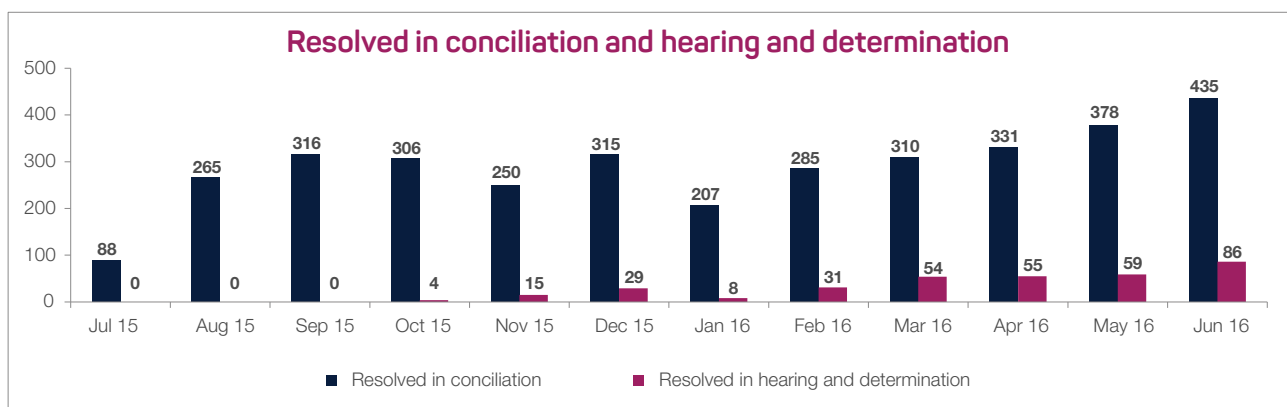
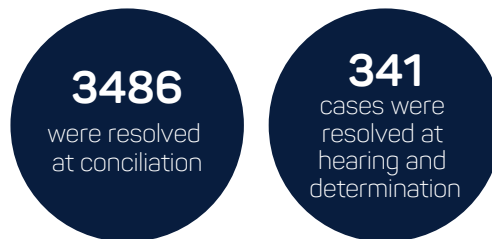
REPORTING ON THE YEAR

ACTIVITIES

The first year of SAET activity focussed on the timely, efficient and effective dispute resolution for return to work matters. In its first year of operation SAET received a total of **4,904 applications**, resolving 3,829 cases leaving 1,022 cases in progress.



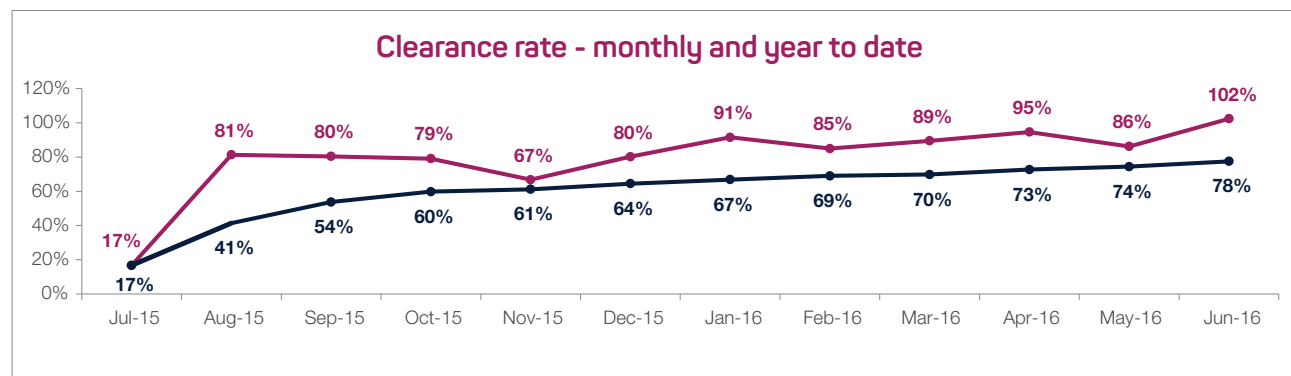
Of these cases



CLEARANCE RATE

The clearance rate is the number of resolved disputes as a percentage of the number of lodged disputes. It is an indication of how effectively a court or tribunal is managing its case load.

Across the first 12 months of SAET operating there was a steady increase in the clearance rate.



TIMELINESS

Applications are currently taking an average of **9 weeks to resolve** by conciliation, compared to 28 weeks under the previous dispute resolution system.

Matters that do not resolve at conciliation take an average of 25 weeks from lodgement to resolution at hearing and determination.

CATEGORIES OF APPLICATIONS

There are three types of applications that can be made to SAET under the Return to Work Act 2014 (RTW Act). These are an application to have a **decision reviewed (s97)**; an application to have a **decision expedited (s113)**; and an application for **suitable employment (s18)**.

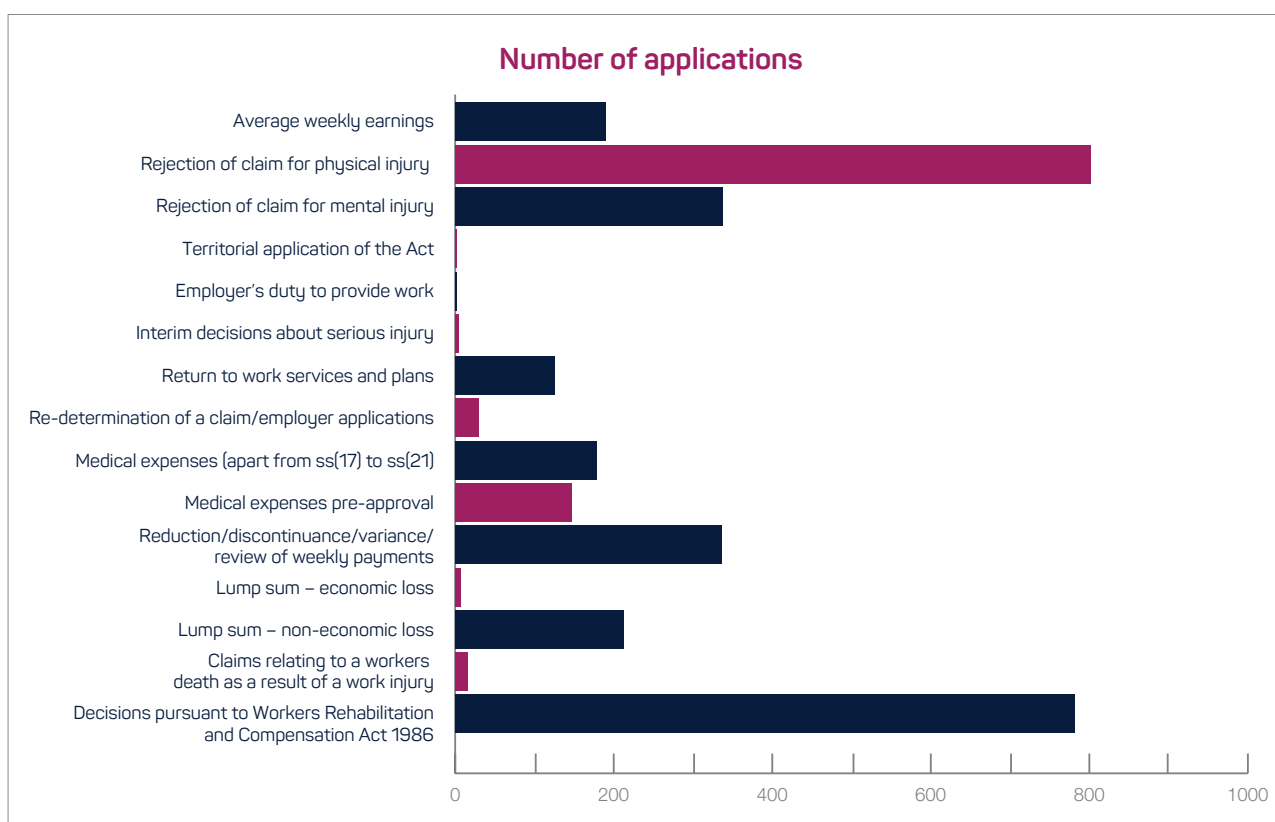
Of the applications received in 2015-16, 3,171 were reviewable decisions; 1,695 were to expedite a decision, and 38 were suitable employment applications.

Types of applications received



REVIEWABLE DECISIONS

The SAET Regulations require information that relates to each category of reviewable decision. For the purposes of reporting, these categories are grouped as per the chart below.



The tables on the following page show:

- > the number of applications considered by the Tribunal for each category of decision
- > the proportion of the total number of disputes for each category represented as a percentage of the total number of reviewable decision applications
- > a summary of the time taken for each category of decision between the receipt of the application and its resolution – either by way of conciliation or by hearing and determination – expressed as a percentage

REVIEWABLE DECISIONS BY CATEGORY

Section		Number of applications lodged	Proportion as a % of total lodged
S5/s 47	Average weekly earnings	190	5.99%
S7(2)(a)/S40	Rejection of claim for physical injury	802	25.29%
S7(2)(b)	Rejection of claim for mental injury	337	10.63%
S10-12	Territorial application of the Act	2	0.06%
S18-19	Employer's duty to provide work	2	0.06%
S21(3)	Interim decisions about serious injury	5	0.16%
S24-25	Return to work services and plans	126	3.97%
S31(9)	Re-determination of a claim/employer applications	30	0.95%
S33	Medical expenses (apart from ss(17) to ss(21))	178	5.61%
S33	Medical expenses pre-approval	147	4.64%
S48	Reduction/Discontinuance/Variance/Review of weekly payments	336	10.60%
S55-56	Lump sum – economic loss	7	0.22%
S57-58	Lump sum – non-economic loss	212	6.69%
S59-63	Claims relating to a workers death as a result of a work injury	16	0.50%
	Decisions pursuant to Workers Rehabilitation and Compensation Act 1986	781	24.63%
	Total	3171	

SUMMARY OF TIME PERIODS FROM LODGMENT TO RESOLUTION BY CATEGORY

Section		0-3 months	3-6 months	6-9 months	9-12 months
S5/s 47	Average weekly earnings	82.39%	14.79%	2.82%	0.00%
S7(2)(a)/S40	Rejection of claim for physical injury	64.96%	22.75%	9.84%	2.46%
S7(2)(b)	Rejection of claim for mental injury	64.68%	26.15%	8.26%	0.92%
S10-12	Territorial application of the Act	50.00%	50.00%	0.00%	0.00%
S18-19	Employer's duty to provide work	100.00%	0.00%	0.00%	0.00%
S21(3)	Interim decisions about serious injury	50.00%	50.00%	0.00%	0.00%
S24-25	Return to work services and plans	76.00%	17.00%	5.00%	2.00%
S31(9)	Re-determination of a claim/employer applications	88.00%	8.00%	4.00%	0.00%
S33	Medical expenses (apart from ss(17) to ss(21))	75.71%	17.14%	5.71%	1.43%
S33	Medical expenses pre-approval	77.54%	17.39%	4.35%	0.72%
S48	Reduction/ Discontinuance/ Variance/ Review of weekly payments	80.62%	14.34%	4.65%	0.39%
S55-56	Lump sum – economic loss	50.00%	33.33%	16.67%	0.00%
S57-58	Lump sum – non-economic loss	73.33%	18.52%	5.19%	2.96%
S59-63	Claims relating to a workers death as a result of a work injury	71.43%	0.00%	14.29%	14.29%
	Decisions pursuant to Workers Rehabilitation and Compensation Act 1986	68.66%	23.62%	6.41%	1.31%

The recording of categories of reviewable decision is according to section 97 of the RTW Act. The reviewable decisions have been grouped according to the decision type. Some reviewable decisions arise from other sections of the Act and have been included in the tables above in the category that most closely reflects the nature of the decision. Reviewable decisions made pursuant to the Workers Rehabilitation and Compensation Act 1986 have been grouped as a separate category. Some of these decisions were made prior to the commencement of SAET but the applications for review were lodged in SAET. Some of the decisions were made after the commencement of SAET but due to the transitional provisions in the RTW Act the decisions were made pursuant to the Workers Rehabilitation and Compensation Act 1986.

EXTENSION OF TIME APPLICATIONS

In the past year 828 initial applications for extension of time were allowed for the purpose of conducting conciliation.

The issue of whether a substantive extension of time should be granted is dealt with if the matter is not resolved at conciliation.

INDEPENDENT MEDICAL ADVISERS

In the course of the dispute resolution process, uncertainty or disagreement about aspects of a worker's injury or condition, or its consequences, often arises. In such cases SAET may refer a medical question to an Independent Medical Adviser (IMA) for expert opinion to assist it in resolving that uncertainty or disagreement, and to enable the just, timely and efficient resolution of the dispute.

Medical questions may relate to any aspect of a worker's claim for compensation including, for example, diagnosis, recommendations for treatment, surgical options, whether more than one injury arises from the same trauma, and whole person impairment assessments.

IMAs are medical professionals. Their independence and professionalism is central to the integrity and overall success of the Return to Work scheme.

IMAs have been appointed by the Minister on the recommendation of a panel of respected representatives of the medical profession (AHAPRA, AMA SA, RANZCP), workers (SA Unions) and employers (Self-Insurers of South Australia). A total of 55 IMAs have been appointed.

SAET has run two professional development programs for the IMAs covering their role, the application of psychological theory to medical decision making in the context of report writing, and medical report writing in the context of SAET.

There were 23 referrals made during the reporting period.

It is likely the number of referrals to IMAs will increase under the new permanent impairment protocol.

23
referrals
made

REVIEWS AND APPEALS

Part 5 of the Act provides for reviews and appeals from decisions of Conciliation Officers, Magistrates and Presidential Members.

Section 66 allows a decision of a Conciliation Officer to be reviewed by a single Presidential Member. That person may affirm, vary or set aside the decision under review. In 2015-16 there were 4 such reviews.

Section 67 allows a decision of a single Presidential Member, or of several Tribunal members, but not a Tribunal Full Bench, to be appealed to a Full Bench of the Tribunal on a question of law. The function of the Full Bench is different to that which operated under the repealed Act. The Full

Bench endeavours to determine the matter for itself, and not remit the matter for re-hearing unless exceptional circumstances apply. In 2015-16 there were 8 appeals against decisions of single Presidential Members.

Under section 68, an appeal lies to the Full Supreme Court from a decision of the Full Bench on a question of law if a Judge of the Supreme Court grants permission to appeal. There was one matter in 2015-16 where leave was sought to appeal a decision of the Full Bench to the Full Supreme Court. As yet the outcome of that application is not known.

From 1 July 2015 until its dissolution, 16 appeals were lodged in the Workers Compensation Tribunal.

DISSOLUTION OF THE WORKERS COMPENSATION TRIBUNAL

SAET was established to replace the Workers Compensation Tribunal (WCT) as part of the Government's 2015 reform of workers compensation, and future reform of employment related matters generally. From 1 July 2015 when SAET's Return to Work (workers compensation) jurisdiction commenced, no new matters were commenced in the WCT, and existing cases were progressively resolved to a stage where the Government considered it was appropriate to dissolve the WCT.

The WCT's last day of operations was on Friday 4 March 2016. All remaining matters were transferred to SAET in accordance with the transitional regulations made under the *Return to Work Act 2014*, making SAET the sole dispute resolution forum for South Australia's Return to Work scheme.

At closure 1,336 files concerning 779 matters were transferred across to SAET. Since that time 659 files covering 454 matters have closed.

For cases transferred to SAET, it was largely business as usual. The dispute resolution processes have been streamlined, but are much the same as they were before. Any existing decisions, directions or orders relating to those matters continued to apply under SAET, and there was no effect on entitlements or rights under the *Return to Work Act 2014*.

THE YEAR AHEAD

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JURISDICTIONAL EXPANSION

While originally established to deal with workers compensation disputes under the Return to Work scheme, SAET was also designed to manage other employment-related disputes over time. The government plans to confer additional jurisdiction on SAET as a key step in this reform process, ensuring that South Australia has a contemporary approach to resolving a range of employment-related disputes.

In accordance with the government's Transforming Employment Dispute Resolution Policy, SAET will be further expanded to manage a range of other South Australian employment and industrial matters.

It is anticipated that SAET will commence management of matters previously managed by the Industrial Relations Court, Industrial Relations Commission, Equal Opportunity Tribunal, Public Sector Grievance Review Commission, Police Review Tribunal (in part), Teachers Appeal Board, Dust Diseases list of the District Court, Criminal jurisdiction of the Magistrates Court in respect of "industrial offences" and common law employment contract disputes heard in the Magistrates, District and Supreme Courts.

CASE MANAGEMENT SYSTEM

SAET has begun investing in a new case management system that will allow the Tribunal to process applications and manage conciliation conferences and hearings using electronic case files. All correspondence and documents that are associated with the file will be able to be generated and managed electronically, reducing processing times, manual handling and paper use.

Conciliation conferences and hearings will be assigned to Members after a conflict search and according to availability. Reminders and notifications will be generated so that the case manager is able to follow up with parties and ensure that all documentation is received within the allocated timelines.

A project of this size and complexity includes case management, configuration, data migration, notifications, redaction, and production of reports, search functions, security access, and stakeholder management. Implementation involves the restructure of the Registry team, including training and transition into the new roles.

The new case management system will go live early in 2017.

MEMBER DIRECTORY

PRESIDENTIAL MEMBERS

President Senior Judge James Peter McCusker

Deputy President Judge Brian Patrick Gilchrist

Deputy President Judge Peter Dennis Hannon

Deputy President Judge Leonie Jane Farrell

Deputy President Mark Calligeros

Deputy President Steven Peter Dolphin

Deputy President Michael Leslie Braim Ardlie

Deputy President Stephen Mark Lieschke

CONCILIATION OFFICERS

Anne Lindsay

Anthony Corrighan

John Palmer

Jennifer Russell

Darryl Willson

Andrew Neale

Lucy Byrt

Jodie Carrel

Melinda Doggett

Gina Nardone

REGISTRAR

Leah McLay, Registrar

Anna Guthleben, Deputy Registrar



SOUTH
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Oct/2016