



SOUTH  
AUSTRALIAN  
**EMPLOYMENT**  
**TRIBUNAL**

# South Australian Employment Tribunal

## 2016-17 Annual Report

South Australian Employment Tribunal

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Date presented to Minister: 26 October 2017

To:  
The Honourable John Rau MP  
Minister for Industrial Relations

This annual report is presented to Parliament to meet the statutory reporting requirements of *South Australian Employment Tribunal 2014* and meets the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

Submitted on behalf of SAET by:

**Leah McLay**

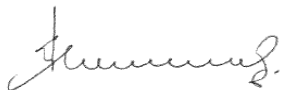
Registrar  
26 October 2017



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**Justice McCusker**

President SAET  
26 October 2017



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## Section A: Reporting required under the *Public Sector Act 2009*, the *Public Sector Regulations 2010* and the *Public Finance and Audit Act 1987*

### **Tribunal purpose and role**

The South Australian Employment Tribunal (SAET) is South Australia's sole forum for dealing with workers compensation and return to work matters under *the Return to Work Act 2014* (RTW). SAET aims to be accessible and responsive to the parties needs and is an integral part of the State's justice system.

SAET works with parties to resolve disputes through agreement at conciliation wherever possible. 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 decisions on workers compensation claims; and
- disputes about an employer providing suitable employment for a worker who has been incapacitated for work as a consequence of a work injury.

From 1 July 2017 SAET's jurisdiction is expanded to include the Industrial Relations Court and Commission and employment related matters under other Acts.

### **Objectives**

The Tribunal's objectives are set out in section 8 of the SAET 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.

## Key strategies and their relationship to SA Government objectives

Key strategy	SA Government/AGD objectives
To ensure efficient and effective resolution of disputes with a minimal level of formality.	South Australians have contemporary, inclusive and efficient civil, criminal and administrative justice systems.
To ensure early and timely resolution of disputes by supporting alternative dispute resolution wherever possible.	South Australians have contemporary, inclusive and efficient civil, criminal and administrative justice systems.
To be a leader in the delivery of best practice dispute resolution through continuous service improvement.	South Australians have contemporary, inclusive and efficient civil, criminal and administrative justice systems.

## Legislation administered by the Tribunal

*South Australian Employment Tribunal Act 2014.*

## Organisation of the Tribunal<sup>1</sup>

### 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

### Registrar

Leah McLay, Registrar  
 Anna Guthleben, Deputy Registrar

### Conciliation Officers

Anne Lindsay  
 Anthony Corrighan  
 John Palmer  
 Jennifer Russell  
 Darryl Willson  
 Andrew Neale  
 Lucy Byrt  
 Jodie Carrel  
 Melinda Doggett  
 Gina Nardone

<sup>1</sup> Organisation of the Tribunal during the reporting period.

## Section B: Reporting required under any other act or regulation

### South Australian Employment Tribunal Regulations 2015

#### 9—Annual report

For the purposes of section 89(3) of the Act, a report must include the following particulars in respect of the financial year to which the report relates:

- (a) information relating to each category of reviewable decision considered by the Tribunal (according to the section of the *Return to Work Act 2014* under which the original decision was made) as follows:
  - (i) the number of applications considered by the Tribunal for each category of decision;
  - (ii) the proportion of the total number of disputes considered by the Tribunal under Part 6 of the *Return to Work Act 2014* that each category of decision represents;
  - (iii) a summary of the range of periods of time taken for each category of decision between the receipt of applications by the Tribunal and the resolution of matters (in relation to matters resolved in the relevant financial year);
- (b) the number of applications made to the Tribunal for an expedited determination of a matter under section 113 of the *Return to Work Act 2014*;
- (c) the number of extension of time applications granted by the Tribunal under section 100 of the *Return to Work Act 2014*;
- (d) the number of referrals made to independent medical advisers by the Tribunal under section 121 of the *Return to Work Act 2014*;
- (e) the number of reviews and appeals instituted under Part 5 of the Act.

## SAET-Reporting on the year

The focus for 2016-17 was timely, efficient and effective dispute resolution for return to work matters. In its second year of operation SAET received a total of 5924 applications, a 20.8% increase compared to 2015-16. SAET resolved 4945 cases, 27% more than in 2015-16.

Note: the previous year's figures were 4,904 applications received, 3,892 resolved.

Table 1.1 SAET Applications Received and Resolved

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
<b>Applications Received</b>	636	897	573	424	440	402	381	370	467	336	461	537	5924
<b>YTD No. Received</b>	636	1533	2106	2530	2970	3372	3753	4123	4590	4926	5387	5924	
<b>Applications Resolved</b>	450	485	413	430	474	364	301	424	476	305	452	371	4945
<b>YTD No. Resolved</b>	450	935	1348	1778	2252	2616	2917	3341	3817	4122	4574	4945	

Of the 4,945 cases resolved 83% (4,088) were resolved at conciliation, and 17% (857) were resolved at hearing and determination.

Table 1.2 SAET Applications Resolved in conciliation or hearing and determination

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
<b>Resolved at Conciliation</b>	377	434	369	380	406	308	249	318	358	234	365	290	4088
<b>Resolved at Hearing</b>	73	51	44	50	68	56	52	106	118	71	87	81	857

In SAET's second year of operation there was an increase in the number of applications received and resolved across all application types.

Table 1.3 SAET Applications received and resolved: comparison 2015-16 with 2016-17

<b>Application Type</b>	<b>Received 2015-16</b>	<b>Resolved 2015-16</b>	<b>Received 2016-17</b>	<b>Resolved 2016-17</b>
Reviewable Decisions (s97)	3171	2222	4129	3120
Expedited Decisions (s113)	1695	1585	1755	1788
Suitable Employment (s18)	38	22	40	37
<b>TOTAL</b>	<b>4904</b>	<b>3892</b>	<b>5924</b>	<b>4945</b>

The clearance rate is the number of resolved disputes as a percentage of lodged disputes. It is an indication of how effectively a court or tribunal is managing its case load. At the conclusion of 2016-17 our year to date clearance rate was 83%, a 5% improvement on the year to date clearance rate at the conclusion of 2015-16.

Table 1.4 SAET Clearance Rates

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Monthly</b>	71%	54%	72%	101%	108%	91%	115%	114%	102%	91%	98%	69%
<b>Year to Date</b>	71%	61%	64%	70%	76%	78%	78%	81%	83%	84%	85%	83%

**SAET Reviewable decisions**

Table 1.5 SAET Reviewable Decisions by Category and Time to Resolution

Reviewable Decision	Applications	% of Total Lodged	Percentage resolved			
			0-3 months	3-6 months	6-9 months	9-12 months
Average weekly earnings	213	5.2%	76.7%	13.0%	5.2%	4.1%
Rejection of claim for physical injury	1132	27.4%	52.1%	28.2%	12.0%	6.1%
Rejection of claim for mental injury	462	11.2%	47.9%	29.7%	13.8%	6.9%
Territorial application of the Act	2	0.0%	100.0%	0.0%	0.0%	0.0%
Employer's duty to provide work	0	0.0%	0.0%	0.0%	0.0%	0.0%
Interim decisions about serious injury	96	2.3%	63.6%	13.6%	18.2%	0.0%
Return to work services and plans	150	3.6%	68.8%	21.6%	6.4%	3.2%
Re-determination of a claim/employer applications	66	1.6%	50.0%	37.5%	4.2%	6.3%
Medical expenses (apart from ss(17) to ss(21))	266	6.4%	72.9%	19.3%	5.3%	0.5%
Medical expenses pre-approval	865	20.9%	58.8%	25.5%	12.1%	3.6%
Reduction/discontinuance/variance/review of weekly payments	386	9.3%	63.2%	24.1%	9.8%	2.3%
Lump sum - economic loss	16	0.4%	57.1%	28.6%	0.0%	0.0%
Lump sum - non-economic loss	370	9.0%	57.2%	27.6%	6.2%	7.4%
Claims relating to a workers death as a result of a work injury	24	0.6%	45.5%	18.2%	9.1%	9.1%
Decisions pursuant to Workers Rehabilitation and Compensation Act 1986	81	2.0%	28.7%	30.4%	11.3%	13.9%
TOTAL	4129	100.0%				

Table 1.5 shows:

- the number of applications considered by the Tribunal for each category of decision;
- the proportion of the total number of disputes that each category represents expressed 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;



### Expedited determination applications

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 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.

Table 1.6 Expedited determination applications

Application Type	Received	Resolved
Expedited Decisions (s113)	1755	1788 <sup>2</sup>
<b>TOTAL</b>	5924	4945

### Extension of time applications

In 2016-17, 545 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.

### Referrals made to Independent Medical Advisors

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 the dispute resolution process.

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.

There were 11 referrals made during the reporting period.

Table 1.7 Referrals to Independent Medical Advisors

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	TOTAL
3	0	3	0	2	0	0	2	0	0	1	0	11

<sup>2</sup> Resolutions are higher than the number of applications received as the number resolved includes applications lodged prior to 1 July 2016.

## Reviews and Appeals

Part 5 of the SAET 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 2016-17 there were 19 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.

In 2016-17 there were 53 appeals against decisions of single Presidential Members. A further 6 matters were referred directly to a Full Bench by the President. This is a vast increase from the previous year where there were 4 section 66 reviews and 8 section 67 appeals.

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 were 5 matters in 2016-17 where leave was sought to appeal a decision of the Full Bench to the Full Supreme Court. Three of these were Workers Compensation Tribunal decisions and two were SAET decisions.

Table 1.8 Reviews and Appeals against SAET decisions

Reviews and Appeals	2015-16	2016-17
Review a decision of a Conciliation Officer (s66)	4	19
Appeal of a decision to the Full Bench (s67)	8	53
Presidential referrals to a Full Bench	0	6
Application to the Supreme Court to appeal a Full Bench decision (s68)	1	5

## Section C: Reporting of public complaints as requested by the Ombudsman

Nil complaints received.