



SOUTH  
AUSTRALIAN  
**EMPLOYMENT  
TRIBUNAL**

## **2017-18 Annual Report**

SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

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Date presented to Minister: 29 October 2018

To:

The Honourable Rob Lucas MLC

Treasurer

This annual report is to be presented to Parliament to meet the statutory reporting requirements of *South Australian Employment Tribunal Regulations 2015* 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 the South Australian Employment Tribunal by:

Full name of authorised person

**The Honourable Justice Steven Dolphin**

President



\_\_\_\_\_  
Signature

29 October 2018

Date

**Leah McLay**

Registrar



\_\_\_\_\_  
Signature

29 October 2018

Date

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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***

### **Agency purpose or role**

The South Australian Employment Tribunal (SAET) is established under the *South Australian Employment Tribunal Act 2014*. It is South Australia's dispute resolution forum for dealing with workers compensation and return to work matters under the *Return to Work Act 2014*.

From 1 July 2017, the jurisdiction of SAET was expanded and the South Australian Employment Court (SAEC) was created. The expanded jurisdiction allows for SAET and SAEC to provide dispute resolution for matters formerly resolved by: the Industrial Relations Court and Commission; the District Court in respect of dust diseases matters; the criminal jurisdiction of the Magistrates Court in respect of certain summary offences; the Magistrates, District and Supreme Courts in respect of common law employment contract matters; the Teachers Appeal Board and Classification Review Panels; the Equal Opportunities Tribunal; the Police Review Tribunal; and the Public Sector Grievance Commission.

SAET aims to resolve disputes quickly and fairly through alternative dispute resolution. If a negotiated resolution is not achieved, the disputed matter will be formally heard and determined.

SAET aims to be accessible and responsive to the needs of parties and is an integral part of the State's justice system.

## Objectives

Section 8 of the SAET Act provides:

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 objective
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 agency**

### **Establishing Act**

*South Australian Employment Tribunal Act 2014*

### **Conferring Acts**

*Return to Work Act 2014*

*Fair Work Act 1994*

*Fair Work Act 2009 (Commonwealth)*

*Construction Industry Long Service Leave Act 1987*

*Dust Diseases Act 2005*

*Education Act 1972*

*Equal Opportunity Act 1984*

*Fire and Emergency Services Act 2005*

*Industrial Referral Agreements Act 1986*

*Long Service Leave Act 1987*

*Police Act 1998*

*Public Sector Act 2009*

*Training and Skills Development Act 2008*

*Work Health and Safety Act 2012*

## **Organisation of the Tribunal**

### **Presidential Members**

President Justice Dolphin

President Justice McCusker (ceased 31 October 2017)

Deputy President Judge Gilchrist

Deputy President Judge Hannon

Deputy President Judge Farrell

Deputy President Judge Calligeros

Deputy President Judge Kelly (commenced 19 December 2017)

Deputy President Magistrate Lieschke

Deputy President Magistrate Ardlie

### **Registrars**

Registrar McLay

Deputy Registrar Guthleben (ceased 2 May 2018)

Deputy Registrar Lindsay (commenced 13 February 2018)

**Commissioners**

Commissioner Lindsay (Manager, Conciliation Services)

Commissioner Palmer

Commissioner Russell

Commissioner Willson

Commissioner Neale

Commissioner Byrt

Commissioner Carrel

Commissioner Doggett

Commissioner McMahon

Commissioner Aikens

Commissioner Smyth

Commissioner Georgeff

Commissioner Nardone

Commissioner Ward

Supplementary Panel Members are appointed by Statute and are asked to hear matters at the discretion of the President.

Staff assigned to SAET pursuant to s 74 of the *SAET Act*

**Work health, safety and return to work programs of the agency and their effectiveness**

<b>Program name and brief description</b>	<b>Effectiveness</b>
SAET Health and Wellbeing Initiative	Health and Wellbeing Committee established and successfully embedded.  Numerous activities and events aimed at improving collaboration and engagement have been implemented with high attendance numbers recorded.

## 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 under the Return to Work Act 2014 (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;

(iia) the number of matters subject to a pre-hearing conference under section 45 of the Act for each category of decision;

(iib) the number of matters proceeding to a full hearing before the Tribunal for each category of decision;

(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);

(ab) the number of actions for damages commenced before the South Australian Employment Court under Part 5 of the Return to Work Act 2014;

(ac) the number of proceedings concluded under Part 5 of the Return to Work Act 2014;

(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;

(da) information relating to each category of proceedings considered by the Tribunal in respect of jurisdiction conferred on it by another Act (according to the section of the Act under which the application for the proceedings was made).

(e) the number of reviews and appeals instituted under Part 5 of the Act.



## 1. Return to Work Act 2014 applications – performance reporting

The focus for 2017-18 was timely, efficient and effective dispute resolution for return to work matters. In its third year of operation, SAET received a total of 4923 *Return to Work Act 2014* (RTW Act) applications, and resolved 4264 cases.

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>	529	461	450	400	442	354	335	320	376	362	432	462	4923
<b>YTD No. Received</b>	529	990	1440	1840	2282	2636	2971	3291	3667	4029	4461	4923	
<b>Applications Resolved</b>	349	385	369	350	368	337	256	346	355	312	426	411	4264
<b>YTD No. Resolved</b>	365	734	1103	1453	1821	2158	2414	2760	3115	3427	3853	4264	

Of the 4264 RTW Act cases resolved in 2017-18, 76.2% (3248) were resolved at conciliation, and 23.8% (1016) were resolved at hearing and determination. In addition 58 cases were resolved from cases transferred from the Workers Compensation Tribunal.

Table 1.2 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>	275	294	312	274	276	265	194	262	263	226	294	313	3248
<b>Resolved at Hearing &amp; Determination</b>	74	91	57	76	92	72	62	84	92	86	132	98	1016

Table 1.3 Applications Received and Resolved

Application Type	Received 2016-17	Resolved 2016-17	Received 2017-18	Resolved 2017-18
Reviewable Decisions (s97)	4129	3120	3465	2836
Expedited Decisions (s113)	1755	1788	1414	1387
Suitable Employment (s18)	40	37	44	41
Part 5 RTW Act damages actions	0	0	0	0
<b>Total Lodged within SAET</b>	<b>5924</b>	<b>4945</b>	<b>4923</b>	<b>4264</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 2017-18 our year to date clearance rate was 87%.

Table 1.4 Clearance Rates

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Monthly</b>	66%	84%	82%	88%	83%	95%	76%	108%	94%	86%	99%	89%
<b>Year to Date</b>	66%	74%	77%	80%	82%	81%	84%	85%	85%	85%	86%	87%

**SAET Reviewable decisions**

Table 1.5 SAET Reviewable Decisions by Category and Time to Resolution

Reviewable Decision	Applications (1)	% of Total Lodged (2)	Percentage resolved (3)				Pre-hearing Conference (4)	Hearing (5)
			0-3 months	3-6 months	6-9 months	9-12 months		
Average weekly earnings	171	4.9%	74.3%	12.3%	5.8%	5.8%	40	3
Rejection of claim for physical injury	1262	36.4%	31.4%	18.1%	7.5%	5.9%	601	65
Rejection of claim for mental injury	507	14.6%	38.3%	22.5%	12.0%	6.3%	200	25
Territorial application of the Act	1	0.0%	0.0%	0.0%	0.0%	0.0%	0	0
Interim decisions about serious injury	168	4.8%	17.9%	11.9%	4.8%	6.5%	154	6
Return to work services and plans	113	3.3%	53.1%	18.6%	4.4%	9.7%	40	2
Re-determination of a claim/employer applications	44	1.3%	47.7%	27.3%	9.1%	4.5%	18	1
Medical expenses (excluding pre-approvals)	246	7.1%	44.3%	13.0%	7.7%	8.1%	100	7
Medical expenses - pre-approval	294	8.5%	56.8%	11.2%	3.4%	3.7%	107	21
Reduction/discontinuance/variation/review of weekly payments	340	9.8%	56.5%	17.9%	8.5%	6.8%	176	27
Lump sum - economic loss	27	0.8%	44.4%	11.1%	11.1%	3.7%	11	0
Lump sum - non-economic loss	216	6.2%	40.3%	13.9%	4.2%	8.3%	138	31
Claims relating to a workers death as a result of a work injury	28	0.8%	32.1%	32.1%	0.0%	7.1%	16	2
Decisions pursuant to Workers Rehabilitation and Compensation Act 1986	48	1.4%	27.1%	8.3%	10.4%	2.1%	33	13
<b>TOTAL</b>	<b>3465</b>	<b>100.0%</b>					<b>1634</b>	<b>203</b>

Table 1.5 shows:

1. the number of applications considered by the Tribunal for each category of decision;
2. the proportion of the total number of disputes that each category represents expressed as a percentage (of the total number of reviewable decision applications);
3. 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;
4. the number of matters referred from Conciliation to a Presidential Member for a Pre-Hearing Conference;
5. the number of matters proceeding to a formal Hearing before a Presidential Member

## Extension of time applications

In 2017-18, 348 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

Where medical questions arise, not already dealt with on the evidence, SAET may refer the medical question(s) to an Independent Medical Adviser (IMA) for an 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 18 referrals made during the reporting period.

Table 1.6 Referrals to Independent Medical Advisors

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	TOTAL
0	2	2	2	0	1	1	1	0	0	8	1	18

## 2. Reviews and Appeals

Part 5 of the SAET Act provides for reviews from decisions of Commissioners and appeals from decisions of Presidential Members.

Section 66 allows a decision of a Commissioner to be reviewed by a Presidential Member. That person may affirm, vary or set aside the decision under review. In 2017-18 there were 19 reviews. The reviewed decision may be affirmed, varied or set aside.

Section 67 allows a decision of a Presidential Member to be appealed to a Full Bench of SAET. In 2017-18 there were 89 appeals against decisions of a Presidential Member. There was a significant increase in matters before the Full Bench in 2017-18, SAET already having experienced an increase in 2016-17.

Section 22 allows a Presidential Member to refer a question of law to the Full Bench. In 2017-18 there have been 8 compared with 6 in the previous year.

Section 68 allows for an appeal 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 19 matters in 2017-18 where leave was sought to appeal a decision of the Full Bench to the Full Supreme Court. Seventeen of these were Workers Compensation Tribunal decisions and two were SAET decisions.

Table 1.7 Reviews and Appeals against SAET decisions

Reviews and Appeals	2016-17	2017-18
Review a decision of a Commissioner (s66)	19	19
Appeal of a decision to the Full Bench (s67)	53	89
Question of law referred to a Full Bench (s22)	6	8
Application to the Supreme Court to appeal a Full Bench decision (s68)	5	19

### 3. Other Act applications – performance reporting on the year

Table 2.1 provides a summary of other Act applications received and resolved during the 2017-18 from other Act applications. There have been a total of 997 applications received and 727 resolved during the 2017-18 financial year.

Table 2.1 SAET Other Act Applications Received and Resolved

Item	Total
<b>Applications Received</b>	<b>997</b>
Applications Resolved	
Applications Closed at Registry	98
Applications Resolved at Conciliation	309
Applications Resolved at Arbitration	89
Application Resolved at Hearing & Determination	231
<b>Total Applications Resolved</b>	<b>727</b>

Table 2.2 provides a breakdown of the applications received and resolved during 2017-18 by application type and the time it takes to resolve an application.

Table 2.2 SAET Other Act Applications Time to Resolution

Application Type	Total Received	Total Resolved	% Resolved 0-3 Months	% Resolved 3-6 Months	% Resolved 6-9 Months	% Resolved 9-12 Months
<b>Monetary Claims</b>	<b>302</b>	<b>236</b>	49%	22%	8%	0%
- State	55	54				
- Commonwealth	247	182				
<b>Industrial Disputes</b>	<b>86</b>	<b>55</b>	72%	17%	4%	0%
<b>Unfair Dismissal</b>	<b>70</b>	<b>50</b>	64%	22%	8%	0%
<b>Work Health &amp; Safety Prosecutions</b>	<b>4</b>	<b>12</b>	0%	25%	25%	0%
<b>Apprentices and Traineeships</b>	<b>62</b>	<b>48</b>	94%	2%	2%	2%
- Disputes	44	34				
- Suspensions	18	14				
<b>Equal Opportunity Matters</b>	<b>87</b>	<b>26</b>	42%	38%	15%	4%
- Exemptions	12	4				
- Complaints	73	20				
- Extension of time	2	2				
<b>Fire &amp; Emergency Services Act</b>	<b>-</b>	<b>1</b>	0%	0%	0%	0%
<b>Police Reviews</b>	<b>2</b>	<b>2</b>	100%	0%	0%	0%
<b>Dust Diseases</b>	<b>79</b>	<b>51</b>	22%	39%	20%	4%
<b>Public Sector Grievances</b>	<b>54</b>	<b>40</b>	68%	28%	3%	3%
- Reviews	42	31				
- Disciplinary Dispute	11	7				
- Public Sector Act	1	2				
<b>Recovery Action</b>	<b>54</b>	<b>32</b>	3%	3%	9%	6%
<b>Other</b>	<b>56</b>	<b>50</b>	54%	12%	10%	6%
<b>Total</b>	<b>856</b>	<b>603</b>				

Note: Resolution time is calculated from the time of lodgement to the time of resolution.

Table 2.3 provides a summary of the approval of awards and enterprise agreements during the 2017-18.

Table 2.3 Approval of Awards and Enterprise Agreements

<b>Item</b>	<b>Total</b>
Applications Received	141
Applications Closed	124

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

### Summary of complaints by subject

<b>Public complaints received by SAET</b>	
<b>Category of complaints by subject</b>	<b>Number of instances</b>
Facilities Management	1
Member Conduct	8
Other	2

### Complaint outcomes

<b>Nature of complaint or suggestion</b>	<b>Services improved or changes as a result of complaints or consumer suggestions</b>
Facilities Management	The relevant process was reviewed with new practices created and practiced.
Member Conduct	Conduct complaints were reviewed as part of performance management and continuous improvement processes. Training and Professional Development is tailored to respond to the feedback that we receive.
Other	Complaints by the public about parties or representatives are referred to the appropriate organisation or person who is responsible for providing a response to that feedback.