



SOUTH  
AUSTRALIAN  
**EMPLOYMENT  
TRIBUNAL**

## **2019-20 Annual Report**

**SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL**

Riverside Centre, North Terrace, Adelaide

[www.saet@sa.gov.au](http://www.saet@sa.gov.au)

Contact phone number 8207 0999

Contact email [saet@sa.gov.au](mailto:saet@sa.gov.au)

Date presented to Minister: 26 October 2020

To:

The Honourable Rob Lucas MLC

Treasurer

Pursuant to s 89 of the *South Australian Employment Tribunal Act 2014*, the President of the Tribunal must on or before 31 October in each year make a report to the Minister on the administration and operation of the Tribunal during the previous financial year.

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:

**The Honourable Justice Steven Dolphin**

President

  
\_\_\_\_\_  
Signature

26 October 2020

**Wendy Wakefield**

Acting Registrar

  
\_\_\_\_\_  
Signature

26 October 2020

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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* (SAET Act). SAET is a statutory independent tribunal and court that:

- resolves return to work disputes
- resolves certain employment and industrial disputes
- regulates South Australia's industrial awards, agreements and registers
- determines work and safety related prosecutions
- resolves dust disease matters

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.

## **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 (for matters referred pursuant to s 95B only)*

*Fire and Emergency Services Act 2005*

*Industrial Referral Agreements Act 1986*

*Long Service Leave Act 1987*

*Police Act 1998*

*Public Sector Act 2009*

*Technical and Further Education Act 1975*

*Training and Skills Development Act 2008*

*Work Health and Safety Act 2012*

## **ORGANISATION OF THE TRIBUNAL**

### **Presidential Members**

President Justice Dolphin

Deputy President Judge Gilchrist

Deputy President Judge Hannon (ceased 22 November 2019)

Deputy President Judge Farrell

Deputy President Judge Calligeros

Deputy President Judge Kelly

Deputy President Judge Rossi

Deputy President Magistrate Lieschke

Deputy President Magistrate Ardlie (ceased 9 August 2019)

Deputy President Magistrate Cole



### **Registrars**

Registrar McLay

Deputy Registrar Murdoch (ceased 6 March 2020)

Deputy Registrar Wakefield (commenced 17 June 2019)

### **Commissioners**

Commissioner Palmer (ceased 31 October 2019)

Commissioner Russell

Commissioner Willson

Commissioner Neale

Commissioner Byrt

Commissioner Carrel

Commissioner Doggett

Commissioner McMahon

Commissioner Smyth (ceased 5 February 2020)

Commissioner Georgeff

Commissioner Nardone

Commissioner Ward

Commissioner Cairney (commenced 11 July 2019)

Commissioner Sullivan (commenced 11 July 2019)

Commissioner Williams (commenced 11 July 2019)

**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.

## 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 2019-20 was timely, efficient and effective dispute resolution for return to work matters. In its fifth year of operation, SAET received a total of 4140 *Return to Work Act 2014* (RTW Act) applications, and resolved 4138 cases.

Table 1.1 Applications Received and Resolved

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Applications Received	326	332	341	402	327	336	291	352	413	362	316	342	4140
YTD No. Received	326	658	999	1401	1728	2064	2355	2707	3120	3482	3798	4140	
Applications Resolved	309	367	333	384	355	283	281	347	368	358	394	359	4138
YTD No. Resolved	309	676	1009	1393	1748	2031	2312	2659	3027	3385	3779	4138	

Of the 4138 RTW Act cases resolved in 2019-20, 66% (2717) were resolved at conciliation, and 34% (1421) were resolved at hearing and determination.

Table 1.2 Applications Resolved in Conciliation or Hearing and Determination

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Resolved at Conciliation	187	218	231	229	243	188	187	231	247	266	256	234	2717
Resolved at Hearing & Determination	122	149	102	155	112	95	94	116	121	92	138	125	1421

The majority of RTW Act cases received (72%) were applications about reviewable decisions.

Table 1.3 Applications Received and Resolved

Application Type	Received 2018-19	Resolved 2018-19	Received 2019-20	Resolved 2019-20
Reviewable Decisions (s97)	3122	3079	2961	2957
Expedited Decisions (s113)	1256	1308	1121	1137
Suitable Employment (s18)	59	50	56	43
Section 42 Redemption Application	1	1	0	0
Part 5 RTW Act damages actions	0	0	2	1
Total Lodged within SAET	4438	4438	4140	4138

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 the 2019-20 financial year, SAET's clearance rate was 100%.

Table 1.4 Clearance Rates

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Monthly	95%	111%	98%	96%	109%	84%	97%	99%	89%	99%	125%	105%
Year to Date	95%	103%	101%	99%	101%	98%	98%	98%	97%	97%	99%	100%

**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	12+ months		
Average weekly earnings	167	6%	60%	17%	7%	3%	13%	24	2
Rejection of claim for physical injury	1079	36%	27%	23%	13%	7%	30%	257	51
Rejection of claim for mental injury	494	17%	35%	28%	9%	7%	21%	103	17
Territorial application of the Act	1	0%	0%	100%	0%	0%	0%	0	0
Employer's duty to provide work	1	0%	0%	0%	0%	0%	0%	0	0
Interim decisions about serious injury	61	2%	10%	7%	3%	7%	74%	22	12
Return to work services and plans	70	2%	51%	16%	3%	11%	19%	8	3
Re-determination of a claim/employer applications	104	4%	48%	22%	10%	6%	15%	25	2
Medical expenses (excluding pre-approvals)	138	5%	38%	14%	5%	8%	36%	21	2
Medical expenses - pre-approval	218	7%	23%	13%	7%	6%	51%	50	17
Reduction/discontinuance/variance/review of weekly payments	182	6%	43%	16%	7%	2%	32%	23	8
Lump sum - economic loss	122	4%	50%	21%	6%	4%	19%	19	5
Lump sum - non-economic loss	300	10%	34%	13%	6%	5%	43%	55	16
Claims relating to a workers death as a result of a work injury	17	1%	21%	8%	8%	4%	58%	10	1
Decisions pursuant to Workers Rehabilitation and Compensation Act 1986	7	0%	5%	8%	3%	2%	81%	12	4
<b>TOTAL</b>	<b>2961</b>	<b>100%</b>						<b>629</b>	<b>140</b>

## Notes:

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 times a Pre-Hearing Conference was scheduled for the first time on a case;
5. The number of matters proceeding to a formal Hearing before a Presidential Member

### Extension of time applications

In 2019-20, 420 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, SAET may, on its own initiative or an application by a party, refer the medical question(s) to one of 44 Independent Medical Advisers (IMAs) for inquiry and report.

There were 32 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	4	11	3	3	3	0	1	0	1	4	2	32

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

Table 2.1 provides a summary of other Act applications received and resolved during 2019-20 from other Act applications. There have been a total of 1159 applications received and 1160 resolved during the 2019-20 financial year.

Table 2.1 SAET Other Act Applications Received and Resolved

Item	Total
<b>Applications Received</b>	<b>1159</b>
Applications Resolved	
Applications Closed at Registry	152
Applications Resolved at Conciliation	537
Applications Resolved at Arbitration	3
Application Resolved at Hearing & Determination	468
<b>Total Applications Resolved</b>	<b>1160</b>



Table 2.2 provides a breakdown of the applications received and resolved during 2019-20 by application type and the time it takes to resolve an application.

Table 2.2 SAET Other Act Applications Time to Resolution (1)

Application Type	Total Received	Total Resolved	% Resolved 0-3 Months	% Resolved 3-6 Months	% Resolved 6-9 Months	% Resolved 9-12 Months	% Resolved 12+ Months
<b>Monetary Claims</b>	<b>366</b>	<b>397</b>	<b>44%</b>	<b>15%</b>	<b>11%</b>	<b>9%</b>	<b>21%</b>
- State	114	86					
- Commonwealth	252	311					
<b>Industrial Disputes</b>	<b>78</b>	<b>80</b>	<b>44%</b>	<b>20%</b>	<b>14%</b>	<b>6%</b>	<b>16%</b>
<b>Unfair Dismissal</b>	<b>78</b>	<b>75</b>	<b>68%</b>	<b>19%</b>	<b>5%</b>	<b>3%</b>	<b>5%</b>
<b>Work Health &amp; Safety Prosecutions</b>	<b>9</b>	<b>4</b>	<b>0%</b>	<b>25%</b>	<b>50%</b>	<b>25%</b>	<b>0%</b>
<b>Apprentices and Traineeships</b>	<b>45</b>	<b>39</b>	<b>97%</b>	<b>3%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>
- Disputes	41	34					
- Suspensions	4	5					
<b>Equal Opportunity Matters</b>	<b>13</b>	<b>18 (2)</b>	<b>0%</b>	<b>0%</b>	<b>50%</b>	<b>6%</b>	<b>44%</b>
<b>Fire &amp; Emergency Services Act</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>Police Reviews</b>	<b>2</b>	<b>2</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>Dust Diseases</b>	<b>65</b>	<b>79</b>	<b>10%</b>	<b>27%</b>	<b>14%</b>	<b>14%</b>	<b>35%</b>
<b>Public Sector Grievances</b>	<b>45</b>	<b>52</b>	<b>58%</b>	<b>27%</b>	<b>0%</b>	<b>0%</b>	<b>15%</b>
- Reviews	39	42					
- Disciplinary Dispute	6	10					
<b>Recovery Action</b>	<b>101</b>	<b>64</b>	<b>8%</b>	<b>8%</b>	<b>5%</b>	<b>8%</b>	<b>72%</b>
<b>Other</b>	<b>238</b>	<b>269</b>	<b>46%</b>	<b>15%</b>	<b>3%</b>	<b>6%</b>	<b>29%</b>
<b>Total</b>	<b>1040</b>	<b>1079</b>					

Notes:

1. Resolution time is calculated from the time of lodgement to the time of resolution.
2. An additional 36 open *Equal Opportunity Act 1984* cases were transferred to the South Australian Civil and Administrative Tribunal
3. Includes 50 applications for WHS entry permits

Table 2.3 provides a summary of the approval of awards and enterprise agreements during 2019-20.

Table 2.3 Approval of Awards and Enterprise Agreements

Item	Total
Applications Received	119
Applications Closed	81

### 3. 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. In 2019-20 there were 10 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 2019-20 there were 55 appeals against decisions of a Presidential Member compared with 72 in the previous year.

Section 22 allows a Presidential Member to refer a question of law to the Full Bench. In 2019-20 there have been 2 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 21 matters in 2019-20 where permission was sought to appeal a decision of the Full Bench to the Full Supreme Court.

Table 3.1 Reviews and Appeals against SAET decisions

Reviews and Appeals	2018-19	2019-20
Review a decision of a Commissioner (s66)	6	10
Appeal of a decision to the Full Bench (s67)	72	55
Question of law referred to a Full Bench (s22)	6	2
Application to the Supreme Court to appeal a Full Bench decision (s68)	13	21

## SECTION C: REPORTING OF PUBLIC COMPLAINTS AS REQUESTED BY THE OMBUDSMAN

### SUMMARY OF COMPLAINTS BY SUBJECT

Public complaints received by SAET	
Category of complaints by subject	Number of instances
Professional behaviour	1
Service delivery	2

### COMPLAINT OUTCOMES

Nature of complaint or suggestion	Services improved or changes as a result of complaints or consumer suggestions
Professional behaviour	The process has been reassigned to an appropriate level so that it is properly resourced.
Service delivery	These complaints were taken into account as part of continuous improvement processes resulting in reviews of systems and forms.