



SOUTH
AUSTRALIAN
**EMPLOYMENT
TRIBUNAL**

2020-21 Annual Report

SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

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Date presented to Minister: 5 October 2021

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

5 October 2021

Wendy Wakefield

Registrar



Signature

5 October 2021

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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 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 and Children's Services Act 2019

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 Farrell (ceased 3 September 2020)

Deputy President Judge Calligeros

Deputy President Judge Kelly

Deputy President Judge Rossi

Deputy President Judge Crawley (commenced 7 December 2020)

Deputy President Magistrate Lieschke

Deputy President Magistrate Cole

Registrars

Registrar McLay (ceased 3 July 2020)

Registrar Wakefield (commenced as Acting Registrar 6 July 2020 and appointed Registrar from 17 December 2020)

Deputy Registrar Jhunjhunwala (commenced as Acting Deputy Registrar 6 July 2020 and appointed Deputy Registrar from 22 March 2021)

Deputy Registrar Burchell (commenced 9 June 2021)

Commissioners

Commissioner Russell (ceased 31 May 2021)

Commissioner Willson

Commissioner Neale

Commissioner Byrt

Commissioner Carrel

Commissioner Doggett

Commissioner McMahon

Commissioner Georgeff

Commissioner Nardone

Commissioner Ward

Commissioner Cairney

Commissioner Sullivan

Commissioner Williams

Commissioner McDonald (commenced 21 September 2020)

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 2020-21 was timely, efficient and effective dispute resolution for Return to Work matters. SAET received a total of 4468 *Return to Work Act 2014* (RTW Act) applications. This is an 8% increase in RTW applications received compared to the 2019-20 financial year.

Table 1.1 Applications Received and Resolved

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Applications Received	374	314	358	363	372	356	287	340	440	394	432	438	4468
YTD No. Received	374	688	1046	1409	1781	2137	2424	2764	3204	3598	4030	4468	
Applications Resolved	324	297	387	329	385	309	220	397	341	334	405	379	4107
YTD No. Resolved	324	621	1008	1337	1722	2031	2251	2648	2989	3323	3728	4107	

Of the 4107 RTW Act cases resolved in 2020-21, 67% (2738) were resolved at conciliation, and 33% (1369) 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	232	180	240	217	243	200	164	256	233	228	270	275	2738
Resolved at Hearing & Determination	92	117	147	112	142	109	56	141	108	106	135	104	1369

The majority of RTW Act cases received (79%) were applications about reviewable decisions.

Table 1.3 Applications Received and Resolved

Application Type	Received 2019-20	Resolved 2019-20	Received 2020-21	Resolved 2020-21
Reviewable Decisions (s97)	2961	2957	3514	3134
Expedited Decisions (s113)	1121	1137	905	912
Suitable Employment (s18)	56	43	49	61
Part 5 RTW Act damages actions	2	1	0	0
Total Lodged within SAET	4140	4138	4468	4107

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. The clearance rate for RTW Act applications decreased from 100% to 92%, partly due to the increase in applications received, as well as a pending High Court special leave application (*Summerfield*). In addition, prolonged interstate travel restrictions have prevented accredited medical assessors from travelling to South Australia to undertake permanent impairment assessments.

Table 1.4 Clearance Rates

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Monthly	87%	95%	108%	91%	103%	87%	77%	117%	78%	85%	94%	87%
Year to Date	87%	90%	96%	95%	97%	95%	93%	96%	93%	92%	93%	92%

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	152	4%	49%	26%	9%	4%	12%	19	2
Rejection of claim for physical injury	1409	40%	23%	25%	12%	9%	31%	247	50
Rejection of claim for mental injury	521	15%	28%	31%	15%	8%	19%	127	13
Territorial application of the Act	0	0%	0%	0%	0%	0%	0%	0	0
Employer's duty to provide work	2	0%	100%	0%	0%	0%	0%	0	0
Interim decisions about serious injury	54	2%	12%	9%	11%	9%	59%	14	7
Return to work services and plans	66	2%	44%	19%	12%	4%	21%	6	4
Re-determination of a claim/employer applications	100	3%	33%	21%	17%	7%	21%	15	1
Medical expenses (excluding pre-approvals)	148	4%	46%	19%	7%	5%	23%	10	4
Medical expenses - pre-approval	275	8%	26%	16%	13%	9%	36%	54	16
Reduction/discontinuance/variance/review of weekly payments	191	5%	38%	26%	11%	6%	19%	32	6
Lump sum - economic loss	187	5%	29%	18%	12%	17%	23%	22	13
Lump sum - non-economic loss	387	11%	28%	18%	10%	15%	29%	90	33
Claims relating to a worker's death as a result of a work injury	18	1%	10%	30%	10%	0%	50%	6	3
Decisions pursuant to Workers Rehabilitation and Compensation Act 1986	4	0%	4%	0%	4%	7%	85%	5	3
TOTAL	3514	100%						647	155

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 2020-21, 421 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 Advisers

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 46 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
4	4	5	4	1	0	5	7	6	5	2	3	46

2. Other Act applications – performance reporting on the year

Table 2.1 provides a summary of other Act applications received and resolved during 2020-21 from other Act applications. There have been a total of 1156 applications received and 1127 resolved during the 2020-21 financial year.

Table 2.1 SAET Other Act Applications Received and Resolved

Item	Total
Applications Received	1156
Applications Resolved	
Applications Closed at Registry	193
Applications Resolved at Conciliation	548
Application Resolved at Hearing & Determination	386
Total Applications Resolved	1127

Table 2.2 provides a breakdown of the applications received and resolved during 2020-21 by application type and the time it takes to resolve an application. Resolution time is calculated from the time of lodgement to the time of resolution.

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
Monetary Claims	505	462	52%	19%	10%	5%	15%
- State	173	136					
- Commonwealth	332	326					
Industrial Disputes	84	72	44%	18%	11%	13%	14%
Unfair Dismissal	63	71	63%	15%	10%	0%	11%
Prosecutions	8	8	0%	0%	13%	13%	75%
Apprentices and Traineeships	36	33	88%	12%	0%	0%	0%
- Disputes	4	4					
- Suspensions	32	29					
Public Sector Grievances	33	27	41%	37%	7%	4%	11%
- Reviews	31	24					
- Disciplinary Dispute	2	3					
Construction Industry Long Service Leave Act 1987	3	0	0%	0%	0%	0%	0%
Education and Children's Services Act	9	5	20%	60%	0%	0%	20%
Equal Opportunity Act	6	9	22%	11%	33%	0%	33%
Fire & Emergency Services Act	1	0	0%	0%	0%	0%	0%
Dust Diseases Act	68	67	12%	21%	19%	9%	39%
Recovery Actions	98	60	2%	7%	0%	7%	85%
Work Health and Safety Entry Permits	60	71	100%	0%	0%	0%	0%
Other	123	140	31%	19%	5%	7%	38%
Total	1097	1025					

Table 2.3 provides a summary of the approval of awards and enterprise agreements during 2020-21.

Table 2.3 Approval of Awards and Enterprise Agreements

Item	Total
Applications Received	59
Applications Closed	102

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 2020-21 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 2020-21 there were 72 appeals against decisions of a Presidential Member compared with 55 in the previous year.

Section 22 allows a Presidential Member to refer a question of law to the Full Bench. In 2020-21 there were 2 referrals.

Section 68 allows for an appeal to the Court of Appeal 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 8 matters in 2020-21 where permission was sought to appeal a decision of the Full Bench to the Court of Appeal compared to 21 in 2019-20.

Table 3.1 Reviews and Appeals against SAET decisions

Reviews and Appeals	2019-20	2020-21
Review a decision of a Commissioner (s66)	10	10
Appeal of a decision to the Full Bench (s67)	55	72
Question of law referred to a Full Bench (s22)	2	2
Application to the Court of Appeal to appeal a Full Bench decision (s68)	21	8

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

PUBLIC COMPLAINTS

Public complaints received by SAET	
Category of complaints by subject	Number of instances
Professional behaviour	2
Service delivery	3
Communication	2

SERVICE IMPROVEMENTS

Nature of complaint or suggestion	Services improved or changes as a result of complaints or consumer suggestions
Professional behaviour	Complaints were not substantiated.
Service delivery	One complaint was not substantiated. Explanations provided with no system changes required.
Communication	One complaint was not substantiated. Education provided to staff with no system changes required.

ADDITIONAL METRICS

	Total
Number of positive feedback comments	2
Number of negative feedback comments	-
Total number of feedback comments	2
% Complaints resolved within policy timeframes	57% (4 out of 7)