South Australian Employment Tribunal Rules 2022

SOUTH AUSTRALIAN **EMPLOYMENT TRIBUNAL**

South Australian Employment Tribunal Rules 2022

The President and a Deputy President of the South Australian Employment Tribunal after consultation with the Minister make the following Rules under the *South Australian Employment Tribunal Act 2014.*

Contents

PART 1 - Preliminary

1. Name of Rules

These rules are referred to as the South Australian Employment Tribunal Rules 2022 (the Rules).

2. Commencement

The Rules will commence operation on the date of their publication in the Gazette.

3. Revocation and transitional provisions

(1) Subject to this rule, the South Australian Employment Tribunal Rules 2017 and the Fast Track Stream Rules 2020 are revoked.

(2) A proceeding commenced in the Tribunal under the South Australian Employment Tribunal Rules 2017 prior to the commencement date of the Rules will, subject to any direction to the contrary made by the Tribunal, operate under the Rules from the date of commencement.

(3) In respect of any other proceeding commenced prior to the commencement date and transferred to the Tribunal, the Tribunal may give directions to resolve any uncertainty about which rule applies to the proceeding, or to a particular step in the proceeding, and may do anything else necessary to ensure the smoothest possible transition from one jurisdiction to another.

4. Overriding purpose, application of the Rules and identification of any interest

(1) The overriding purpose of the Rules, in their application to proceedings in the Tribunal, is to facilitate the objects of the SAET Act and, in particular, the just, quick and cost effective resolution of the real issues in proceedings.

(2) The Tribunal must seek to give effect to the overriding purpose of the Rules when it exercises any power given to it by the SAET Act or by the Rules and when it interprets any provision in the Rules.

(3) A party to a proceeding is under a duty to assist the Tribunal to achieve the overriding purpose of the Rules, to participate in the processes of the Tribunal in a constructive manner and to comply with directions and orders of the Tribunal.

(4) A party, representative, witness or interpreter to or in a proceeding is under a duty to disclose any interest which is reasonably known or apprehended, personal or pecuniary, in or in relation to any matter or witness before the Tribunal.

(5) Each of the following persons must not, by their conduct, cause a party to a proceeding to be put in breach of a duty identified in sub-rule (3) or (4):

(a) a solicitor or barrister representing the party in a proceeding;

(b) any person with a relevant interest in a proceeding commenced by the party.

(6) The Tribunal may take into account a failure to comply with sub-rule (3), (4) or (5) in making or declining to make an order for costs.

(7) For the purposes of this rule, a person has a relevant interest in a proceeding if the person:

(a) provides financial assistance or other assistance to a party to the proceeding; and

(b) exercises direct or indirect control over, or influences, the conduct of the proceeding or the conduct of a party to the proceeding.

5. Cost effectiveness

(1) Tribunal proceedings must be conducted efficiently and in a manner proportionate to the matter in dispute. Proportionality means ensuring that legal costs and other costs incurred in connection with a proceeding are reasonable and proportionate to the importance and complexity of the issues in dispute.

(2) Legal practitioners and other persons authorised to represent a party in a proceeding must use their best endeavours to facilitate the just, quick and cost effective resolution of the real issues in the proceeding before the Tribunal.

6. Interpretation

(1) In the Rules, unless a contrary intention appears:

words used have the same meaning as words used in the SAET Act or Regulations or a relevant Act or regulations made under a relevant Act;

administrator means a person appointed as an administrator under an administration order as defined in the *Guardianship and Administration Act 1993*;

applicant has the meaning it has in the SAET Act;

approved form has the following meanings:

(a) a document is in **an approved form** if it is in the form of, or substantially similar to, a document approved by the President and published on the Tribunal website, or otherwise made available for use by the Tribunal, or otherwise approved by the Tribunal;

(b) a document is in **the approved form** if it is in the form of the document approved by the President and published on the Tribunal website, or otherwise made available for use by the Tribunal, or otherwise approved by the Tribunal;

Commissioner means a person holding office as a Commissioner of the Tribunal;

company means a company as defined by s 9 of the *Corporations Act 2001* (Cth);

contact details of a person means the person's address, telephone number, mobile number, pager number and email address (as far as each are known or relevant) that can be used by the Tribunal and other parties or persons to contact the person in relation to a proceeding (and in relation to an Australian company, includes the address of the registered office of the company);

contempt includes:

(a) a contempt in the face of the Tribunal;

(b) disruption of a proceeding in the Tribunal or of the Tribunal's processes;

(c) obstruction or perversion of the course of justice:

(i) by intimidation of or interference with a witness; or

(ii) by making statements or publishing material that could prejudice the fair and impartial determination of a proceeding before the Tribunal; or

(iii) in any other way;

(d) obstruction or interference with the proper performance of official duties by an officer of the Tribunal;

(e) deliberate non-compliance with a judgment or order of the Tribunal;

(f) an attempt to do anything that would, assuming the attempt had been carried successfully to conclusion, have constituted a contempt under any of the above paragraphs;

counter-application means any document filed in response to an initiating application;

Court means the South Australian Employment Court however constituted and includes the Full Bench of the Court;

decision has the same meaning it has in the SAET Act;

Deputy President means a Deputy President of the Tribunal;

District Court means the District Court of South Australia;

Full Bench means a Full Bench of the Tribunal (including a Full Bench of the Court) consisting of 3 Presidential members;

guardian certificate means a certificate signed by a proposed litigation guardian certifying that:

(a) the person for whom the proposed litigation guardian consents to act is a person under a legal incapacity, identifying that person's date of birth and, when applicable, details of their mental disability or illness rendering them incapable of managing their participation in a proceeding;

(b) the proposed litigation guardian is eligible to be a litigation guardian for the person under a legal incapacity in the proceeding;

(c) the proposed litigation guardian does not and would not have an interest in the proceeding adverse to the person under a legal incapacity;

(d) the proposed litigation guardian understands the rights and obligations of a litigation guardian; and

(e) the proposed litigation guardian consents to acting as litigation guardian for the person under a legal incapacity in the proceeding.

health practitioner means a health practitioner as defined by s 4 of the *Return to Work Act 2014;*

initiating application means any document by which a proceeding in the Tribunal is started by a person, or by which the Tribunal's jurisdiction is otherwise invoked, and includes an internal review, an appeal and a referral made to or claim brought before the Tribunal under a relevant Act;

Magistrates Court means the Magistrates Court of South Australia;

person under a legal incapacity means a person:

(a) under the age of 18 years; or

(b) who, because of a mental disability or illness, is not capable of managing their participation in a proceeding;

Practice Direction means a direction made by the President about practices and procedures adopted by the Tribunal;

President means the President of the Tribunal;

Presidential member means the President or a Deputy President of the Tribunal;

proceeding means any matter, action, dispute, application, hearing, review, trial, reference, case stated, appeal or other step whatsoever before the Tribunal however constituted pursuant to the SAET Act or in consequence of any

jurisdiction vested in it or a Tribunal member by a relevant Act, whether at the interlocutory or hearing stage or otherwise;

registered agent means a person who is named on the list of registered agents maintained under s 152 of the *Fair Work Act 1994*;

registrar means the Registrar or a Deputy Registrar of the Tribunal;

Regulations means the South Australian Employment Tribunal Regulations 2015;

relevant Act means an Act which confers jurisdiction on the Tribunal;

respondent means a person or entity in relation to whom a decision of the Tribunal or some other form of relief is sought by an applicant;

response means a respondent's answer to an initiating application or any other application made to the Tribunal;

SAET Act means the South Australian Employment Tribunal Act 2014;

settlement conference has the meaning it has in rule 54(1);

Supreme Court means the Supreme Court of South Australia;

the Registrar means the principal registrar of the Tribunal;

Tribunal means the South Australian Employment Tribunal however constituted and, where the context permits, includes the Tribunal in Court Session;

Tribunal in Court Session means the South Australian Employment Court;

Tribunal member means a Presidential member or a Commissioner;

Tribunal website means www.saet.sa.gov.au;

Uniform Civil Rules means the *Uniform Civil Rules 2020* as amended, varied, substituted, replaced and adopted by the District Court from time to time;

(2) A reference in the Rules to any Act or statutory instrument means that Act or statutory instrument as amended or substituted from time to time and includes any instrument made under it or the substituted Act or statutory instrument.

(3) The Rules are to be read as subject to the SAET Act and Regulations and to any applicable provision of a relevant Act or regulations made under a relevant Act.

(4) The Rules comprise general rules and rules that apply to specific types of proceedings. To the extent that there is an inconsistency between a general rule and a rule dealing with a specific type of proceeding, the specific rule is to apply, subject to contrary order of a Presidential member.

7. Application of the Uniform Civil Rules

Subject to any order to the contrary made by the Tribunal, where any issue or procedure is not provided for under the Rules, the SAET Act or a relevant Act, the Uniform Civil Rules apply, and any relevant forms used by the District Court may be adopted and used with such modifications as the circumstances of any particular case may make necessary.

8. Directions, relief from time limits and dispensation from the Rules

(1) The Tribunal may upon application or on its own initiative:

(a) give directions about the procedure to be followed in a particular matter;

(b) extend or abridge a time limit for doing anything in connection with any proceedings, or in relation to commencing any proceedings; or

(c) vary any requirement of the Rules; or

(d) dispense with compliance by any person, or by the Tribunal, with any requirement of the Rules, either before or after the time for compliance arises, and in doing so, may impose any conditions or give any consequential or other directions as are appropriate.

(2) An extension of time will automatically be granted, without application, to enable the Tribunal to conciliate a matter, subject to any order to the contrary made by a Presidential member at any time in a proceeding.

(3) Sub-rule (2) does not apply to a proceeding to which *the Dust Diseases Act 2005* applies.

(4) Sub-rule (2) applies to a monetary claim or a claim for relief against unfair dismissal under the *Fair Work Act 1994* but does not apply to any other proceeding under the *Fair Work Act 1994*.

(5) Sub-rule (2) does not apply to a review under the *Public Sector Act 2009*.

(6) A registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this rule.

9. Seals of the Tribunal

(1) The seals of the Tribunal will be applied to such documents as the President may direct.

(2) The seals of the Tribunal will be in the form that the President approves and kept in the custody of the Registrar.

10. Practice Directions and Guidelines

(1) The President may make any Practice Direction contemplated by the Rules or considered necessary to regulate proceedings in the Tribunal.

(2) The President may issue Guidelines with respect to particular classes of proceedings in order to assist the preparation and conduct of proceedings.

PART 2 - Additional non-criminal jurisdiction of the Court

11. Assignment of additional jurisdictions to the Court

In addition to the jurisdiction conferred on the Court by the SAET Act or a relevant Act, non-criminal proceedings under any of the following Acts or parts of Acts and proceedings in the Tribunal's jurisdiction at common law or in equity, are assigned to the Court should the relevant proceedings be referred for hearing and determination at the conclusion of conciliation in that part of the Tribunal that does not sit as the Court:

(a) Sections 8, 11 and 12, and Chapter 3, Part 6 of the *Fair Work Act 1994*;

(b) Section 13 of the *Long Service Leave Act 1987*;

(c) *Return to Work Act 2014*, except for proceedings under Part 7 of that Act;

(d) SAET Act; and

(e) *Work Health and Safety Act 2012*, except for matters under s 65, Part 7 and Part 12 of that Act.

PART 3 - Documents

12. Form of documents

All documents filed with the Tribunal must:

(a) be in English or, if not in English, be accompanied by a translation of the document into English either prepared by an accredited translator or as directed by a registrar; and

(b) clearly identify the name of the party filing the document or on whose behalf the document is filed; and

(c) include the case number of the proceeding.

13. Filing documents with the Tribunal

(1) Any document, including any approved form, affidavit or other document a party intends to rely on in any proceeding, must be filed at the registry of the Tribunal.

(2) Subject to the Rules, a document must be filed with the Tribunal:

(a) by lodging it at the registry electronically; or

(b) by lodging it in paper form at the registry; or

(c) by sending it in paper form by post to the registry; or

(d) subject to compliance with any applicable Practice Direction, by providing it by any other means that the Tribunal makes available for that purpose.

(3) Except in the case of specified classes of documents the Tribunal has a preference for electronic filing and a registrar may refuse to receive a document that is presented to the Tribunal for filing in non-electronic form and may direct that the document be filed with the Tribunal electronically.

(4) The Registrar may determine that all documents, or specified classes of documents, sought to be filed by some or all persons, or specified classes of persons, must be filed electronically.

(5) The Registrar may determine that specified classes of documents must be filed in paper form.

(6) Failure to comply with sub-rule (4) or (5) may result in a document not being accepted for filing.

14. Registrar may receive documents

Subject to the Rules and if considered appropriate, a registrar may receive an application or other document even though it does not comply with the Rules, and may do so subject to any terms and conditions.

15. Registrar may refuse to receive documents

(1) Subject to the Rules, a registrar may refuse to receive any application or document if it does not comply with the Rules.

(2) A registrar must refuse to receive an application or other document for filing at the Tribunal if:

(a) it is not reasonably legible; or

(b) it is an application that is beyond the jurisdiction of the Tribunal and a Presidential member of the Tribunal has directed a registrar to refuse or reject the application for filing; or

(c) the application or document is an abuse of the Tribunal's process or is scandalous, frivolous or vexatious and a Presidential member of the Tribunal has directed a registrar to refuse or reject the application or document for filing.

(3) The Tribunal may dismiss an application commenced by a document that ought to have been rejected under this rule.

(4) Rejection or dismissal of an application pursuant to this rule does not prevent a further application that complies with the Rules, the SAET Act and any relevant Act from being made.

16. Provision by the Tribunal of copies of documents to parties and other persons

(1) Subject to the Rules, where any initiating application is filed with the Tribunal, a registrar must as soon as reasonably possible, and in any event within 3 business days, serve a copy of the application and any supporting documents:

(a) upon each other party to the proceeding; and

(b) upon any other person not a party to the proceeding as required by the Rules or any Act.

(2) If an initiating application is filed with the Tribunal within 3 business days of the hearing scheduled for the relevant proceeding, a registrar may:

(a) prior to the commencement of the hearing, give a copy of the application and any supporting documents to any person who should receive a copy of the application and supporting documents under the Rules; or

(b) require the person filing the initiating application to serve within a specified time, a copy of the application and any supporting documents on any person who should receive a copy of the application and documents under the Rules.

(3) Subject to the Rules and to the extent that it is reasonably necessary to achieve a just outcome in a proceeding before the Tribunal, or otherwise achieve the objectives of the SAET Act, a Presidential member may direct a registrar to serve a copy of any document or part of any document (including an application, response or other document filed with the Tribunal, a summons issued by the Tribunal, any notice arising during the course of a proceeding or any directions or orders made by the Tribunal) on any person reasonably considered to have a proper interest in the matter.

(4) A registrar may serve a notice or any other document on a party or other person by any means considered appropriate to bring the document to the attention of the party or other person.

(5) If a person refuses to accept a document, it may be served on them by putting the document down in his or her presence and telling them the nature of it.

(6) A registrar is not obliged to serve a copy of any document on a person if the person's whereabouts or contact details cannot be ascertained after reasonable enquiries have been made.

17. Power to order presumptive service

(1) The Tribunal may, on an application for directions brought by a party, make an order for presumptive service of a document.

(2) An order for presumptive service will, if the conditions of the order are complied with, have the effect of presuming that a copy of the document has been served upon the relevant party or person.

(3) Without limiting the nature of an order for presumptive service, an order may provide that service upon one person will stand as service upon another person who is not able to be served or an order may provide that the giving of a notice by some means determined by the Tribunal will stand as service upon a person.

Examples –

1. *An order for presumptive service might provide for serving a copy of the document to a person who might reasonably be expected to bring the document to the attention of the party.*

2. *An order for presumptive service might provide for the publication of notice of the document in a particular newspaper or newspapers or by other means (including electronically).*

18. Parties to serve copies of documents on each other

(1) Subject to the Rules, in the case of any document that is not an initiating application, the party filing it must within 7 days serve a copy of the document and any supporting documents on all other parties to the proceeding, and on any other person not a party as required by the Rules or any Act (unless there is a hearing scheduled in relation to the matter, in which case service must take place not less than 3 business days before the date of the hearing).

(2) The Rules or a Practice Direction may require that a party serve a copy of a particular document on another party or person, in which case the copy must be served on the other party or person:

(a) on the same day, or as soon after filing as possible; or

(b) as directed by a registrar (which may include that the party file with the Tribunal an affidavit as to service of the document on the other party or person).

(3) If the relevant document is a summons issued by the Tribunal under s 33 of the SAET Act, the applicant for the summons must ensure that the summons is served on the person named in the summons at least 5 business days before the date specified in the summons for attendance or as otherwise directed by a Tribunal member.

(4) In any proceeding where an applicant is required to serve a document that initiates a proceeding upon another party, the applicant is responsible for proving that service of the document was effected.

(5) Service of a document may be proved by an affidavit made by the person who served the document setting out:

(a) the date, time and place of service;

(b) how the person to be served was identified; and

(c) how service was effected.

(6) The Tribunal may provide such directions as to service as are required in an individual case having regard to the circumstances of that case and may determine that a document has been served even if sub-rule (5) has not been complied with.

(7) Where an Act does not prescribe a particular method of service of a document that must be used, service may be effected by sending a copy of the document by email to the email address of the party to be served.

(8) An email address of a party served with a document under sub-rule (7) must be ascertained from the contact details provided by the party or by some other reasonable and reliable means.

19. Serving copies on a partnership, trustees or unincorporated association

(1) For the purposes of the Rules but subject to sub-rule (3), if a proceeding is commenced against the members of an existing partnership in the partnership name, a document is taken to have been served on all members of the partnership if it is served on:

(a) any member of the partnership; or

(b) a person who apparently has the management or control of a business operated under the partnership.

(2) For the purposes of the Rules but subject to sub-rule (3), if a proceeding is commenced against trustees of an existing trust in the trust name, a document is taken to have been served on all trustees if it is served on:

(a) any trustee; or

(b) a person who apparently has the management or control of a business operated under the trust.

(3) If the partnership or trust has been dissolved, all former members or trustees against whom the party initiating the proceeding desires to pursue the relevant claim must be individually served with a copy of the relevant document.

(4) For the purposes of the Rules, if a proceeding is commenced against an unincorporated association in the name of the association, a document is taken to have been served on the association if it is served on:

(a) any member of the committee of management of the association; or

(b) any person who holds property on trust for the purposes of the association; or

(c) a person who apparently has the management or control of the business of the association.

PART 4 - Applications and responses

20. Applications

(1) All initiating applications must be in the approved form setting out the grounds for the application and the remedy sought, and must be accompanied by any prescribed fee, or by an application in the approved form to waive or reduce any prescribed fee.

(2) All other applications in relation to proceedings, including applications for general directions about the conduct of the proceedings, must be in an approved form and:

(a) include the nature of the application being made and, if relevant, the legislation under which it is made; and

(b) include the reasons for the application; and

(c) include the directions or remedy sought, including the amount sought if it is a monetary claim.

(3) If an extension of time is sought to make any application or to do any other thing, the application must expressly seek the extension of time and include the reasons why an extension of time should be given.

(4) A person filing an application must provide details of any known requirements for an interpreter, for assistance with a disability for any special cultural requirement, for security or for any other need of a party or witness proposing to attend a conference or a hearing.

21. When an application is commenced

An application is commenced on whichever is the later of:

(a) the date and time when the application is filed in the Tribunal; or

(b) if a fee is required to be paid under the Regulations in respect of the application, the date and time that the fee is paid; or

(c) if a fee required to be paid under the Regulations is waived, the date and time when the fee is waived.

22. Counter-applications and third-party applications

(1) If the Tribunal's jurisdiction permits, a respondent to an initiating application in the Tribunal's jurisdictions under Division 1 or 2 of Part 3 of the SAET Act may, in the response to the application, or separately, make an application to the Tribunal for a remedy against the applicant (a counter-application), or may make an application against a person who is not a party to the proceeding (a third-party application).

(2) A respondent to an application for internal review or appeal who seeks to have the Tribunal's original orders set aside or varied for reasons that differ from those of the applicant may, in the response to the application or separately, make a counter-application for internal review or appeal of the Tribunal's decision.

(3) If a respondent contends that an appeal should be dismissed for reasons different to those contained in the decision under appeal, the respondent must file a notice stating in detail the grounds on which the respondent asserts that the decision should be upheld (a notice of alternate contentions) and provide a copy to the applicant within 14 days of being served with a copy of the appeal.

(4) Any counter-application or third-party application must comply with any relevant rule for applications of the relevant type, and any response to a counter-

application or third-party application must comply with any relevant rule concerning responses.

(5) Subject to any time limit in a relevant Act, a counter-application or third-party application is to be filed within 14 days of service of the application it responds too.

(6) Unless a prescribed fee is waived, a party is not relieved of any requirement to pay any prescribed fee applicable to a counter-application or third-party application.

23. Responses to applications

(1) Subject to the Rules, a response to an application must be in an approved form and must include the respondent's answer to the application and must comply with any relevant rule for the response.

(2) A response must be filed with the Tribunal, and a copy served on all other parties, within 14 days of the respondent receiving a copy of the relevant application.

(3) If the Tribunal considers it appropriate to help effectively dispose of an application, the Tribunal may direct a party to file and serve a copy of a response to an application within a different time to that specified in sub-rule (2).

(4) A response must:

(a) admit or deny, either with or without qualification, each statement of fact made in an application; and

(b) state whether the relief claimed is agreed to or opposed.

(5) Unless otherwise ordered by the Tribunal, each claim set out in the application, and any liability of the respondent to pay any money claimed or give any other form of relief, will be taken to be admitted unless specifically denied in a response filed in the Tribunal.

(6) A person filing a response must provide details of any known requirements for an interpreter, for assistance with a disability for any special cultural requirement, for security or for any other need of a party or witness proposing to attend a conference or a hearing.

24. Amendments

(1) Subject to this rule, an application, response, counter-application, third-party application or notice of alternate contentions may be amended without permission of the Tribunal by filing an amended document of the relevant kind and serving a copy of it on all other parties within 5 business days of the original filing date.

(2) A party who has filed a document to which this rule applies may only amend the document once without permission of the Tribunal.

(3) After the relevant application, response, counter-application, third-part application or notice of alternate contentions has been listed for a conference or a hearing, it may only be amended with the permission of the Tribunal.

(4) A registrar is expressly authorised to constitute the Tribunal for the purposes of this rule.

25. Application to review a decision due to absence

(1) An application to review a decision because a person failed to attend or was not represented at a relevant hearing within the meaning of s 82 of the SAET Act must be made within 14 days of the relevant hearing.

(2) An application under this rule is to be made by an application for directions supported by an affidavit which explains the circumstances of the failure to attend or be represented.

26. Withdrawal of proceedings

(1) Unless a relevant Act or the Rules provide otherwise, a proceeding or a part of a proceeding may be withdrawn by an applicant without the permission of the Tribunal upon the applicant filing a notice of withdrawal with the Tribunal in an approved form.

(2) If the permission of the Tribunal under s 40 of the SAET Act is required to withdraw a proceeding, an application for permission to withdraw the proceeding must be made in an approved form.

(3) If a notice of withdrawal is filed under this rule, a registrar must serve a copy of the notice on each other party and any other person a Tribunal member directs is to receive a copy.

(4) Subject to sub-rule (5), if a proceeding has been set down for hearing, a party may only withdraw that proceeding with the consent of all other parties or with the permission of the Tribunal.

(5) An applicant claiming relief under s 106 of the *Fair Work Act 1994* may file a notice of withdrawal at any time but will be subject to any costs orders that the Tribunal may make under s 110(2) of that Act.

(6) The withdrawal of an internal review or an appeal does not affect the status of a counter-application in the same proceeding.

(7) Subject to the following exceptions, a party who withdraws a proceeding is not prevented from bringing a further proceeding based on the same or substantially the same claim.

Exceptions -

1. *If a party to the later proceeding is entitled to costs in relation to the earlier proceeding, the Tribunal may, on the application of that party, stay any proceeding based on the same or substantially the same claim until the costs have been paid.*

2. *The Tribunal may order that the withdrawal of a proceeding is to have the same effect as a final judgment against the party withdrawing if the withdrawal is for the purpose of giving effect to a final settlement agreed between the parties.*

3. *A further proceeding may not be brought if a relevant time limit has expired and the Tribunal has not granted an extension of time.*

(8) Subject to any relevant Act, the withdrawal of a proceeding does not preclude the Tribunal from making orders in relation to the costs of the proceeding.

27. Changes to contact details and representation arrangements

(1) A party whose contact details change during the course of a proceeding must, within 7 days of the change, file with the Tribunal a written notice in the approved form setting out the new contact details.

(2) A representative who no longer acts for a party to a proceeding must, within 7 days of ceasing to act, file with the Tribunal a written notice in the approved form

advising that they no longer act and must serve a copy of the notice on the party and all other parties.

(3) When a party provides an email address to the Tribunal or another party to a proceeding, or responds to an email sent by the Tribunal or another party by email, the email address provided or used to send email will be taken to be the party's email address unless and until the party advises the Tribunal, in the approved form, of a change of email address and serves a copy on the other parties.

28. Oral applications

Notwithstanding anything in the Rules, but subject to any express provision of the SAET Act or a relevant Act, an application made for any direction or interlocutory or final order of the Tribunal, and any response, may be made orally or in such other manner as the Tribunal may, in the particular circumstances, determine to be fair and convenient. The Tribunal may make a determination under this rule subject to conditions, including requiring notice to be given to any other party.

PART 5 - Criminal Jurisdiction

29. Criminal Procedure

(1) The *Magistrates Court Rules 1992* (Criminal Jurisdiction) generally apply, to the exclusion of the Rules, to the practice and procedure of the Tribunal in the exercise of its jurisdiction over offences, with such modifications as the circumstances in any particular case may make necessary.

(2) The Tribunal may modify the application of the *Magistrates Court Rules 1992*, including by a Practice Direction, either generally or by having regard to the requirements of particular cases in light of the nature of the Tribunal's jurisdiction over offences and the number of prosecutions that may from time to time be commenced in the Tribunal.

PART 6 - Review jurisdiction

30. Application of Part

This Part applies to an application made under Division 1 of Part 3 of the SAET Act.

31. Applications for review

(1) An initiating application for review of a decision must be filed in the Tribunal in the approved form.

(2) The application must include:

(a) a list of all relevant documents;

(b) sufficient details of the complaints made about the decision so as to enable the relevant decision-maker to understand why and on what bases the decision is disputed;

(c) if the reviewable decision to which the application relates was communicated to the applicant in writing, a copy of the decision; and

(d) if the reviewable decision was not communicated to the applicant in writing after being made, sufficient other information so that the Tribunal can identify the decision, the decision-maker and the legislation under which the decision was made.

(3) If in the opinion of a registrar the detail provided in an application for review is insufficient, or supporting documents which must be attached to the application for review are not attached, a registrar or other Tribunal member may refuse to accept the application.

(4) Subject to sub-rule (5), where a registrar or other Tribunal member has refused to accept an application under this rule, the party whose application was refused is permitted to file a further application for review which complies with the Rules and any relevant Act within 14 days of the refusal, in which case the date of filing will be taken to be the date the original application for review was filed.

(5) The reconsideration process under PART 21 C commences from the date of compliance with the Rules and not the deemed date when the original application for review was filed.

32. Section 28 statements, documents and things

(1) For the purposes of s 28 of the SAET Act in proceedings for the review of a decision, the written statement of the reasons for a decision and any document or thing in the decision-maker's possession or control that may be relevant to the Tribunal's review of the decision must be filed in the Tribunal in a Book of Documents within 21 days from when the decision-maker receives notice that an application for review has been made.

(2) Subject to this rule and to any order of the Tribunal to the contrary, at the same time that a Book of Documents is filed in the Tribunal, the decision-maker must provide a copy to all other parties.

(3) The requirement to provide a copy of a Book of Documents to other parties does not apply to any part of a Book of Documents that is the subject of a claim under sub-rule (4) and provision of a copy of that part of the Book of Documents is subject to a direction of the Tribunal.

(4) Where the decision-maker is aware that one or more documents that are required to be provided under s 28 of the SAET Act are the subject of a claim of privilege,

public interest immunity or other immunity or a claim of non-disclosure for other proper reason, then a copy of the Book of Documents does not need be provided to the other parties under sub-rule (2).

(5) Where sub-rule (4) applies, the decision-maker must place the documents into separate parts or volumes of the Book of Documents, of which:

(a) one part is to contain all documents about which such a claim is made and include a clear statement as to the basis upon which the claim for privilege or non-disclosure is made for each document, and be clearly marked with a prominent statement that the part contains confidential materials which are only to be accessed on the direction of a Presidential member; and

(b) the balance of the Book of Documents is to contain all other required material subject to s 28 of the SAET Act, including where relevant a redacted copy of any document subject only in part to a claim under this sub-rule.

(6) A decision made under the *Return to Work Act 2014* that complies with regulation 20 of the *Return to Work Regulations 2015* will be taken to comply with s 28(2)(a) of the SAET Act.

PART 7 - Original Jurisdiction

33. Application of Part

This Part applies to:

(1) an application made under an Act which confers an original jurisdiction on the Tribunal for the purposes of s 31A of the SAET Act; and

(2) an application made to the Tribunal in the exercise of its jurisdiction at common law or in equity.

34. Applications in original jurisdiction

An initiating application in the Tribunal's original jurisdiction must be filed in the Tribunal in the approved form.

35. Actions for damages under the *Return to Work Act 2014*

(1) Unless the Rules or a Practice Direction provide otherwise, in an action for damages under Part 5 of the *Return to Work Act 2014*, or an action seeking contribution from any other tortfeasor liable in respect of those damages, the Uniform Civil Rules and the practice of the District Court of South Australia in its civil jurisdiction as in force from time to time will be applied.

(2) All documents filed in an action under this rule must indicate that the document is filed in the Court and must have immediately underneath the case number the words "Damages Claim, Return to Work Act 2014".

(3) If a claim for damages under Part 5 of the *Return to Work Act 2014* gives rise to a claim for some other matter and that claim is made along with the claim for damages, the precise nature of the other matter is to be specifically pleaded and properly explained in any relevant pleading.

36. Actions for recovery of compensation under the *Return to Work Act 2014*

(1) Unless the Rules or a Practice Direction provide otherwise, in an action seeking recovery of compensation from a wrongdoer under Division 10 of Part 4 of the *Return to Work Act 2014*, the Uniform Civil Rules and the practice of the District Court of South Australia in its civil jurisdiction as in force from time to time will apply.

(2) All documents filed in an action to which this rule applies must indicate that the document is filed in the South Australian Employment Court and must have immediately underneath the case number the words "Recovery Claim, Return to Work Act 2014".

37. Actions under the *Dust Diseases Act 2005*

(1) Unless the Rules or a Practice Direction provide otherwise, in a proceeding to which the *Dust Diseases Act 2005* applies (a Dust Disease matter), the Uniform Civil Rules and the general practice of the District Court of South Australia in its civil jurisdiction as in force from time to time will apply.

(2) Any document filed in a Dust Disease matter must indicate that the document is filed in the South Australian Employment Court and must have immediately underneath the case number the words "Dust Diseases Act 2005".

(3) Dust Disease matters will be placed into the Dust Diseases list and managed in accordance with this rule.

(4) At the first pre-hearing conference, the proceeding will be assigned to one of the following categories based on the state of health of the applicant or such other matter as the Court considers relevant:

ordinary matter: A proceeding that is not urgent because the applicant has a non-life-threatening dust disease or the proceeding is brought by a relative or dependant of a person who has a dust disease or some other appropriate reason.

urgent matter: A proceeding brought by an applicant who is seriously ill and needs an expedited hearing or some other circumstance that gives rise to urgency.

(5) If a party seeks to have a proceeding classified as an urgent matter, whether upon commencement or at a later time, an interlocutory application seeking an urgent pre-hearing conference is to be filed together with an affidavit, dealing with, as fully as circumstances permit, the following matters:

(a) The nature of the disease alleged

(b) the condition of the applicant's health and the degree of urgency;

(c) details of any notification given to other parties to the proceeding and details of practitioners by whom other parties are represented;

(d) readiness for hearing;

(e) whether experts' reports have been obtained and served on other parties;

(f) whether further medical examinations are required;

(g) a proposed expedited interlocutory timetable; and

(h) if an urgent hearing date is sought, details and availability of witnesses and where it is suggested that evidence be taken.

(6) Any available medical report relevant to the applicant's state of health and longevity is to be exhibited to an affidavit filed under sub-rule (5).

(7) An urgent matter will be listed for hearing as soon as possible.

PART 8 - Interlocutory applications

38. Applications for specific or general directions

(1) Before making an interlocutory application, a party is required to endeavour to resolve the subject matter of the proposed application with all relevant parties by agreement.

(2) A party seeking general directions under s 37 of the SAET Act about the conduct of a proceeding, or seeking any specific interlocutory or non-final order, must make an application for directions in an approved form, supported by an affidavit.

(3) Each application filed under this rule must specify all orders sought and make specific reference to the provision/s of the SAET Act and / or a relevant Act authorising the application and must provide any information required by any applicable Practice Direction.

(4) An interlocutory application must be filed electronically if possible or otherwise in accordance with any Practice Direction or Guideline or the Rules.

(5) Unless a registrar determines otherwise, an interlocutory application must not be listed to be heard at the next scheduled hearing unless the application is made, and a copy served on all other parties, not less than 3 business days prior to the scheduled hearing.

(6) The Tribunal will usually deal with an interlocutory application on the papers and any submission, legal argument or fact asserted or relied upon should be described in the application or supporting affidavit.

(7) No order may be made on an interlocutory application unless the supporting affidavit states that the parties have conferred to try to resolve the issue giving rise to the application, and that the subject matter of the application remains in dispute.

(8) The Tribunal may waive the operation of sub-rule (7) in a case of urgency or for other good reason.

(9) The Tribunal may revoke or vary any order made or direction given in response to an interlocutory application upon request by a party or at its own initiative.

39. Section 65 of the SAET Act - enlarging the scope of a proceeding

(1) An application to enlarge the scope of a proceeding under s 65 of the SAET Act must be made in the approved form and a copy of the application together with a notice of objection in the approved form must be served on all other parties to the proceeding at least 14 days before the application is heard by the Tribunal.

(2) If a notice of objection is not filed by any party within 14 days of the party being served a copy of an application under this rule, all parties to the proceeding will be taken to have consented to the application.

(3) Where the parties to a proceeding submit or seek consent orders that involve the resolution of a question not presently in issue in the proceeding, an order pursuant to s 65 of the SAET Act enlarging the scope of the proceeding to resolve will be deemed to have been made to answer the question, and the consent of all relevant parties to the making of the order will be deemed to have been given.

40. Review under s 82 of the SAET Act

(1) An application under s 82 of the SAET Act made by a person in respect of whom the Tribunal has made a decision when the person was absent and not represented at the hearing must be filed at the Tribunal by an application for directions within 28 days of the Tribunal's decision and must include:

(a) details of the relevant proceeding and decision; and

(b) details of when and how the applicant became aware of the Tribunal's decision; and

(c) an explanation of why the applicant did not appear or was not represented at the relevant hearing.

(2) A person may only make one application under s 82 of the SAET Act in respect of the same proceeding without permission of the Tribunal.

41. Directions made by consent

If a party on whom an application for directions is served advises the Tribunal in writing prior to the day on which the application is heard that the party does not wish to be heard upon the application or consents to the orders sought being made, the Tribunal may excuse the party from attending the hearing.

PART 9 - Compulsory Conciliation and other Conferences

42. Compulsory conciliation and other conferences

(1) Subject to the SAET Act or a relevant Act, where a compulsory conciliation conference under s 43 of the SAET Act or other conference under a relevant Act is to be held, the procedure for the conduct of the conference will be as set out in this Part and any applicable Practice Direction.

(2) Subject to any contrary direction by a Presidential member, a compulsory conciliation conference will be conducted by a Commissioner.

43. Initial directions hearing

(1) Subject to any contrary direction by a Presidential member, an initial directions hearing under s 43(1) of the SAET Act will be conducted by a Commissioner.

(2) The initial directions hearing may be conducted in person or by telephone or other means.

(3) At the initial directions hearing the Commissioner will consider the following:

(a) the issues in dispute;

(b) whether any reconsideration of a decision under review has been completed;

(c) the grounds of the application;

(d) the evidence on which the parties intend to rely;

(e) whether further evidence is needed to have an effective compulsory conciliation conference;

(f) the persons who may be required to attend a compulsory conciliation conference;

(g) any other issue that the Commissioner considers relevant.

(4) The parties or their representatives must be prepared to address the matters outlined in sub-rule (3) at the initial directions hearing.

44. Commencement of a compulsory conciliation conference

(1) An initial directions hearing is to be conducted within 21 days of the lodgement of an application.

(2) A compulsory conciliation conference requiring the attendance of the parties must be scheduled as soon as the Commissioner or other Tribunal member conducting the conference is satisfied it is appropriate to do so.

(3) The Tribunal member conducting an initial directions hearing may direct that a compulsory conciliation conference proceed immediately after the initial directions hearing concludes if there are good reasons for making the direction.

45. Actions and powers of Commissioners generally

(1) A Commissioner may exercise such powers and give such directions as may reasonably be required for the effective conduct of a compulsory conciliation conference.

(2) A Commissioner may contact a party and may ask questions in relation to the issue in dispute, and may provide his or her view of the merits of that issue with a view to making suggestions about the form and content of the conference.

(3) A Commissioner may at any time require a party or any other person, within a specified time, to:

(a) identify, clarify and narrow the issues in dispute;

(b) review the evidence relied upon;

(c) identify any issues affecting the parties' ability to negotiate;

(d) consider strategies and develop a plan for gathering information;

(e) deal with actual or anticipated developments that may affect the dispute;

(f) attempt to resolve the dispute or some of the issues in dispute;

(g) give particulars outlining the factual and legal basis underpinning their position;

(h) require a claimant to formulate the amount or type of compensation sought;

(i) submit to, or help facilitate, the referral of a medical question to an independent medical adviser under s 121 of the *Return to Work Act 2014*;

(j) provide further material reasonably required to conciliate the dispute;

(k) make disclosure of documents as set out in the Rules;

(l) comply with his or her obligations under s 104(3) of the *Return to Work Act 2014* for disclosure and access to evidentiary material;

(m) file a Book of Documents (or an index to a Book of Documents) and serve a copy on all other parties.

46. Requirements for parties and representatives at a compulsory conciliation conference

(1) At a compulsory conciliation conference, the parties must attend in person and if represented by a solicitor or an officer of an industrial association, the person with conduct of the proceeding must also attend.

(2) Any party attending a compulsory conciliation conference is expected to participate in an active way, and may be required to:

(a) detail the preparatory work undertaken for the compulsory conciliation conference, and answer whether or not actions or steps the Commissioner requested or ordered be undertaken have been undertaken;

(b) meet with the Commissioner and produce evidentiary material, either at the compulsory conciliation conference or at some other time or place;

(c) answer questions put by the Commissioner;

(d) attend a compulsory conciliation conference when the other party may not be present;

(e) disclose any offers of settlement that have been made to the other party.

47. Adjournments of compulsory conciliation conferences

An application to adjourn a compulsory conciliation conference must be accompanied by any documents (such as medical certificates) that support the reason for seeking the adjournment.

48. Actions taken if a dispute is not resolved

(1) If a dispute is not resolved at a compulsory conciliation conference and a pre-hearing conference is listed, a Commissioner will:

(a) have regard to what actions the parties must take so that they are properly prepared for a pre-hearing conference, and may:

(i) order that a statement of facts and/or issues in dispute be prepared by the parties;

(ii) ascertain what expert evidence (if any) each party intends to rely upon, and whether reports have been sought from those experts, and if appropriate issue directions accordingly having regard to the time limit for seeking reports set out in the Rules;

(iii) make any other order or direction necessary to facilitate the expeditious resolution of the matter, and

(b) within the time allowed by any relevant Act, prepare and forward to the parties a memorandum which complies with s 43(13) of the SAET Act and also contains a summary of the nature of each dispute, the matters remaining in issue, and the positions of the parties.

(2) A s 43(13) memorandum must be kept confidential from the Tribunal member who hears and determines the dispute and is not admissible in proceedings before the Tribunal except, at the conclusion of proceedings, for the purposes of considering making an adverse costs order under s 106(3) of the *Return to Work Act 2014* or for making any other order permitted by the SAET Act, a relevant Act or the Rules.

(3) A Tribunal member who presides over a compulsory conciliation conference or a settlement conference in relation to a proceeding must not hear and determine the proceeding unless all parties to the proceeding consent to that course.

(4) A Tribunal member who conducts a review under the *Public Sector Act 2009* may commence the review by seeing whether some form of conciliated outcome can be achieved but must conduct any discussions concerning a conciliated outcome in the presence of all parties and/or the representatives of all parties.

(5) A Tribunal member who proceeds under sub-rule (4) is not precluded from conducting the review if a conciliated outcome is not achieved.

(6) A Presidential member who presides over a pre-hearing conference or settlement conference in relation to a proceeding may have regard to a s 43(13) memorandum but must not then hear and determine the proceeding unless all parties to the proceeding consent to that course.

(7) Sub-rule (6) does not preclude a Presidential member from making orders, giving directions and deciding interlocutory disputes prior to the hearing and determination of a proceeding.

(8) A document which contains a summary of the nature of each dispute, the subjects remaining in issue and the positions of the parties, but which does not contain any assessment of the merits made by a Commissioner under s 43(13)(a) of the SAET Act, may be provided to and considered by a Presidential member and does not preclude the Presidential member from hearing the proceeding.

49. Consequences of failing to properly participate in conciliation

(1) Where a party is not ready to proceed at an initial directions hearing or a compulsory conciliation conference without good reason (the party), the Commissioner with conduct of the hearing or conference may refer the proceeding to a Presidential member for directions, and before doing so, may order:

(a) that some or all of the costs between the party's professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;

(b) that the party's representative pay to his or her client some or all of the costs which his or her client has been ordered to pay to any other party;

(c) that the party's professional representative pay some or all of the costs of any other party other than his or her client.

50. Recording offers made at or after conciliation

If a party wishes to record an offer made to resolve a dispute at or after a compulsory conciliation conference, it must provide a written copy of the offer to the relevant Commissioner and must comply with any relevant Practice Direction in that regard.

PART 10 - Directions

51. General Directions

At any time during a proceeding a Presidential member may make such directions or orders necessary to achieve the fair and expeditious resolution of the proceeding, including but not limited to the following subjects:

(a) identifying and narrowing the issues in dispute by document or otherwise;

(b) giving and responding to particulars;

(c) detailing the manner and sufficiency of service;

(d) disclosure, inspection and production of documents;

(e) joinder of parties;

(f) enlarging the scope of the proceeding;

(g) requiring the provision of a Statement of Facts, Issues and Contentions or ordering the provision of pleadings if considered appropriate;

(h) consolidating or splitting proceedings;

(i) inspecting property, real or otherwise;

(j) ordering that evidence be given by affidavit;

(k) ordering that an affidavit or other document which is filed and contains scandalous material is to be removed from the file;

(l) expert evidence and Tribunal experts;

(m) disclosure and exchange of expert reports;

(n) ordering an expert to produce an expert report either to a party to the proceedings or to the Tribunal;

(o) the number and order of expert witnesses;

(p) requiring that the parties engage in settlement negotiations independently of the Tribunal;

(q) the attendance of the parties, or any other person, at any conference;

(r) referring a proceeding, or any aspect of or in a proceeding, to mediation;

(s) providing for and limiting the extent of written submissions;

(t) taking evidence and receiving submissions by such means as the Tribunal considers appropriate;

(u) staying a proceeding;

(v) dismissing or striking out a proceeding, or part of a proceeding;

(w) adjourning a proceeding;

(x) granting summary relief;

(y) subject to the Rules and to any provision in a relevant Act, referring a proceeding to a Commissioner to be heard and determined, as a summary proceeding or otherwise;

(z) placing a proceeding in the fast track stream;

(aa) determining the place, date, time and mode of any hearing;

(bb) determining costs, both as to liability and quantum;

(cc) any other matter that the Tribunal considers appropriate.

52. Directions at Hearings

(1) A Tribunal member may at any time by direction –

(a) provide directions and make orders as to the way in which evidence is to be put before the Tribunal;

(b) limit the time to be taken in examining, cross-examining or re-examining a witness;

(c) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;

(d) limit the time to be taken in making any oral submission;

(e) limit the time to be taken by a party in presenting its case;

(f) limit the time to be taken by the hearing;

(g) amend any such limitation.

(2) In deciding whether to make a direction under this rule, a Tribunal member shall have regard to the following matters in addition to any other matters that may be relevant –

(a) the time allowed for a hearing or any part of a hearing must be appropriate; and

(b) any such direction must not detract from the principle that each party is entitled to a fair hearing; and

(c) the complexity or simplicity of the case; and

(d) the number of witnesses to be called by the parties;

(e) the volume and character of the evidence to be led;

(f) the state of the Tribunal lists; and

(g) the time expected to be taken for the trial; and

(h) the importance of the issues in the case as a whole.

53. Attendance in Person

(1) A Tribunal member with conduct of a proceeding may determine, in relation to any hearing or conference, whether the parties and/or witnesses are to attend in person or whether they may participate by audio visual or telephonic means.

(2) In the absence of a specific direction to the contrary, the parties to a proceeding are to attend any compulsory conciliation conference, settlement conference or mediation in person.

PART 11 - Alternative dispute resolution

54. Settlement conferences

(1) In this part:

Settlement conference means a meeting or series of meetings between the parties to attempt to:

(a) resolve by consent a proceeding;

(b) agree facts in dispute in a proceeding; or

(c) narrow the issues in dispute in a proceeding.

(2) A Presidential member may, under s 47 of the SAET Act, order that the parties attend a settlement conference presided over by a Tribunal member at any time during a proceeding.

(3) In presiding over a settlement conference a Tribunal member may make any determination, order or direction considered necessary to facilitate the fair and expeditious conduct of the settlement conference.

(4) If a proceeding is not resolved at a settlement conference, the Tribunal member who conducted the settlement conference may not hear and determine the proceeding unless all parties to the proceeding consent to the Tribunal member doing so.

(5) Unless the Tribunal orders otherwise, a party ordered to attend a settlement conference must attend:

(a) in person; or

(b) in the case of a corporation, by a representative with authority to resolve the dispute at the settlement conference;

and in the company of each party's respective legal representatives.

(6) Subject to sub-rule (7) evidence of:

(a) anything said or done;

(b) any communication, whether oral or in writing;

(c) any admission made; or

(d) any document prepared;

in the course of or for the purposes of a settlement conference must be kept confidential from the Tribunal member who hears and determines the proceeding and is not admissible in the proceeding before the Tribunal.

(7) Sub-rule (6) does not affect the admissibility of any evidence or document in a proceeding if:

(a) the parties to the settlement conference consent to the admission of the evidence or document in the proceeding;

(b) there is a dispute in the proceeding as to whether or not the parties at or as a result of the settlement conference agreed to resolve the proceeding, or some part of or issue in the proceeding, and the evidence is relevant to the agreement or alleged agreement;

(c) there is a dispute in the proceeding as to whether or not the parties at or as a result of a settlement conference agreed any facts relevant to the

proceeding and the evidence is relevant to the agreement or alleged agreement;

(d) the substantive proceeding has concluded and the issue remaining concerns an adverse costs order under s 106(3) of the Return to Work Act 2014 or any other order permitted by the SAET Act, a relevant Act or the Rules.

55. Mediation conducted outside the Tribunal

(1) Where mediation is to be conducted under s 46 of the SAET Act by a person who is not a registrar or a Tribunal member, no later than 7 days prior to the commencement of the mediation, a registrar must give a notice to the person specified as the mediator by the Tribunal and the parties to the mediation stating:

(a) when, where and by whom the mediation is to be conducted; and

(b) the responsibilities of the mediator and the parties prior to, during and after the mediation.

(2) The person specified to conduct the mediation must conduct it in accordance with recognised ethical and professional standards for mediators.

(3) If the mediator is not a registrar or a Tribunal member, a party to the mediation may be directed by the Tribunal to pay or contribute to the costs of the mediation.

56. Mediation conducted by the Tribunal

Where mediation is to be conducted under s 46 of the SAET Act by the Tribunal, the Tribunal will consult with the parties to make arrangements and establish protocols for the conduct of the mediation.

PART 12 – Disclosure of documents

57. Disclosure and production of documents

(1) Unless a relevant Act provides otherwise, each party must disclose the documents that are, or have been, in the party's possession, custody or power to produce and are directly relevant to any material issue in a proceeding.

(2) Unless a relevant Act provides otherwise, the Tribunal may at any time, including during the course of hearing a proceeding, order a party or any other person to disclose in the approved form and produce to the Tribunal and to other parties to the proceeding, any documents which are, or have been, in the possession of that person that are directly relevant to a material issue in the proceeding.

(3) Where a person is required to disclose or produce documents that are directly relevant to any material issue in a proceeding, but discloses or produces documents which are not directly relevant, an adverse order for costs, may be made against them to reflect the additional time and expense to which the other parties have been put by reason of the unnecessary disclosure or production, or an order may be made for such other penalty as the Tribunal sees fit to impose having regard to all the circumstances.

(4) A party to a proceeding may object to producing a document on the basis that the document is privileged from production, or if there is some other good reason why the document should not be produced.

(5) The Tribunal may excuse a party who has disclosed the existence of a document to which sub-rule (4) applies from producing the document or part of the document to the Tribunal or any other party.

(6) In proceedings under the *Return to Work Act 2014*, and in relation to evidence which comprises still or moving images of a worker taken without their knowledge or consent, the Tribunal may order that such evidence be disclosed and produced to the other parties to the dispute only if:

(a) the disclosure and production is by consent; or

(b) the evidence has previously been produced to a medical expert who is treating the worker; or

(c) the decision under review relies on a medical opinion that is wholly or predominantly based upon the evidence; or

(d) the Tribunal is satisfied that, in the interests of justice, there are good reasons that justify the disclosure and production of the evidence.

(7) In proceedings under the *Return to Work Act 2014* where a party is in possession of evidentiary material the disclosure of which could prejudice the investigation of a suspected offence, and the party seeks to not disclose the material on that basis, the party can make an ex-parte application to be exempted from complying with s 104(3) of the *Return to Work Act 2014* and the application will be heard by a Presidential member.

(8) A Presidential member who makes an order under sub-rule (7) may make such further or incidental orders thought fair and appropriate in the circumstances, including but not limited to, delaying or adjourning the hearing of any compulsory conciliation conference or imposing a time limit on any order made under sub-rule (7).

58. Non-party disclosure and production of documents

(1) On an application made by a party to a proceeding, it the Tribunal is satisfied that a person or body who is not a party to the proceeding (a non-party) may be in possession of documents that appear to be relevant to any material issue in a proceeding, the Tribunal may order that the non-party.

(a) disclose in the approved form whether it has or has had possession, custody or power over documents apparently relevant to a material issue in a proceeding and if so, provide full particulars of such documents;

(b) produce documents apparently relevant to any material issue in a proceeding to the Tribunal or for inspection or copying by the parties;

(c) comply with rule 57 as though the non-party were a party to the proceedings, with any necessary changes; or

(d) verify the non-party's disclosure, production or list of documents either by affidavit or in person, and if in person, be available for questioning.

(2) A non-party subject to an order made under this rule is entitled, subject to contrary order of the Tribunal, to reasonable compensation from the party seeking the disclosure, for the time and expense involved in complying with the order.

(3) The amount of compensation payable under sub-rule (2) is to be agreed between the relevant parties or adjudicated by the Tribunal.

59. Possession of documents

For the purposes of this Part, a person is taken to be in possession of a document if:

(a) the document is in the person's custody or control; or

(b) it lies within the person's power to obtain immediate possession of the document or to control its disposition (whether or not the power is one that would be recognised at law or in equity).

PART 13 - Summonses

60. Form of Summonses

(1) A summons issued to a person to give evidence or produce evidentiary material under s 33 of the SAET Act must be in the approved form.

(2) Permission of the Tribunal is required to issue a summons to a person or body who is not a party to a proceeding, to produce evidentiary material without giving oral evidence.

(3) If there is any conflict between a rule in this Part and a rule concerning a summons for medical records in a proceeding under the *Return to Work Act 2014* in Part 22 E of the Rules, the rule in Part 22 E prevails to the extent of any inconsistency.

(4) A summons issued by the Tribunal is an order within the meaning of s 91(2) of the SAET Act.

61. Complying with Summonses

(1) Subject to this Part, unless a person has a lawful excuse for not complying with a summons, they must comply with the summons and:

(a) in the case of a summons to attend and give evidence, must come to the Tribunal to give evidence on the date and at the time specified in the summons and remain in attendance until excused by the Tribunal; and

(b) in the case of a summons to produce documents or other things, must, in accordance with the terms of the specific order made, either:

(i) attend and produce the documents or other things to the Tribunal at the place and by the date and time specified in the summons; or

(ii) send the summons or a copy of the summons and the documents or other things to a registrar at the place specified in the summons so the documents or things arrive by the date specified in the summons, or no later than 14 days from receipt of the summons if no date for delivery is specified.

(2) With the permission of a registrar, the date to attend the Tribunal or to produce documents or things may be varied to a later date by the person who applied for the summons by giving notice of the later date to the summonsed party. Such notice will be taken to vary the time to attend or produce things to the later date.

(3) Unless a summons specifically requires the production of the original or a certified copy of a document, a copy of the document required by the summons, including an electronic copy, will satisfy the summons.

62. Objections to Summonses

(1) If a person to whom a summons is directed objects to complying with the summons, or if another person affected by the summons objects to the summons being complied with (the objector), the objector must try to resolve the objection with the party who applied for the summons to be issued before the date for compliance.

(2) If the objector is unable to resolve an objection to a summons informally, the objector must, before the time for compliance with the summons:

(a) inform a registrar and the party who applied for the summons of the basis of the objection in writing; and

(b) unless directed otherwise by the Tribunal, attend the Tribunal on the date for compliance to explain the basis of the objection.

(3) Objecting to a summons does not relieve the objector from complying with a summons.

(4) Unless an objection to a summons is dealt with under sub-rule (2) before the date for compliance, any document which is subject to an objection to produce, is to be provided to a registrar with the objection clearly stated in writing, or explained by the objector in person if the documents are delivered in person.

(5) If an objection to producing a document cannot be resolved by agreement, the issue is to be referred to a Tribunal member for decision.

(6) A registrar is expressly authorised to constitute the Tribunal for the purposes of this rule.

63. Access to and use of documents and other things

(1) In the case of a summons to produce documents or other things, if by the date for compliance with the summons no person has objected to any party having access to the summonsed materials, a registrar will make directions in relation to access.

(2) Where sub-rule (1) applies, the Tribunal may order that parties have electronic access to the summonsed materials.

(3) If any person or party believes there are grounds for objecting to the parties to a proceeding having access to summonsed materials, they may object to access being given, or may seek to have access to the summonsed materials before any party is given access (first access).

(4) Without limiting the ambit of sub-rule (3), an objection to a party having access to summonsed materials may be based on privilege, confidentiality or other good reason.

(5) If first access is granted to a person or party, they are to inspect the summonsed materials and give notice to the Tribunal in writing within 7 days whether there is an objection to any party having access to the summonsed materials.

(6) A notice under sub-rule (5) must describe in sufficient detail the documents in respect of which access is opposed, the party or parties to whom access should not be given and the basis for opposing access.

64. Allowances and Expenses of Complying with Summonses

(1) A party who applies for a summons to be issued is liable to pay:

(a) the reasonable expenses incurred in complying with a summons by the person or body which responds to the summons; and

(b) if some other loss or expense is reasonably incurred in complying with a summons, a reasonable amount to cover that loss or expense.

(2) If a summons to attend and give evidence is issued, the person named in the summons need not comply with the summons unless they are provided with a reasonable amount to cover the cost of travel to and from the Tribunal.

(3) The amount payable for an allowance, expense or loss under this rule is to be agreed between the party issuing the summons and the person or body summonsed or, failing agreement, by the Tribunal.

PART 14 - Expert evidence

65. Application of Part

(1) Subject to those rules that concern the evidence of independent medical advisers appointed under s 118 of the *Return to Work Act 2014*, the provisions of this Part apply whenever a party proposes to provide the Tribunal with evidence from an expert witness in any proceedings, including a report obtained from a health practitioner as defined by the *Return to Work Act 2014*.

(2) An expert report that complies with this Part will be taken to be the evidence of the expert without the expert needing to be called.

(3) The author of an expert report may only be called to give oral evidence at a hearing by the party relying on the expert's evidence with the permission of the Tribunal.

(4) Oral examination in chief of the author of an expert report who is required for cross examination may be permitted where good reason to do so exists and does not give rise to procedural unfairness to another party.

66. Content of expert reports

(1) If a party proposes to rely on expert evidence in a proceeding, the party must seek a written report from the expert, which must:

(a) set out the expert's qualifications to make the report;

(b) set out the facts and factual assumptions on which the report is based;

(c) identify any documentary materials on which the report is based;

(d) distinguish between objectively verifiable facts and matters of opinion that cannot be (or have not been) objectively verified;

(e) set out the reasoning of the expert leading from the facts and assumptions to the expert's opinion on the questions asked;

(f) set out the expert's opinion on the questions asked;

(g) be provided on the understanding and acknowledgement that the expert's primary duty is to be truthful and accurate to the Tribunal rather than to serve the interests of a party or parties;

(h) make reference to this rule; and

(i) comply with any requirements imposed by any Practice Direction.

67. Filing and serving copies of expert reports

(1) Subject to this rule, any expert report on which a party intends to rely in a proceeding must be filed with the Tribunal, and a copy served on each other party along with a copy of the commissioning letter, within 7 days of the report being provided by the expert and no less than 14 days prior to the hearing and determination of the proceeding.

(2) Each party to the proceeding is to seek to ensure that any expert report upon which a party intends to rely in a proceeding is filed with the Tribunal, and a copy served on each other party, no less than 3 business days prior to any pre-hearing conference held under s 45 of the SAET Act.

(3) Where a party proposes to obtain an updated report from an expert prior to the hearing and determination of the proceeding, the report must be provided to any other party prior to the pre-hearing compliance or readiness conference.

68. Special power in relation to expert evidence

The Tribunal may:

(a) direct that the evidence of an expert witness be deferred until all (non-expert) factual evidence has been taken; or

(b) ask an expert witness to review the (non-expert) factual evidence and to state, by affidavit or in oral evidence, whether the witness wishes to modify an opinion earlier expressed in the light of the evidence or a particular part of the evidence.

(c) arrange for an expert witness to give oral evidence, and permit each party to cross examine the expert, if a good reason exists why no party would call the expert and their evidence is likely to be relevant.

69. Conferences, etc, of experts

(1) If two or more expert witnesses provide reports about the same or a similar question, the Tribunal may, on its own initiative or at the request of a party, give one or more of the following directions:

(a) that expert witnesses confer with each other;

(b) that expert witnesses produce for use by the Tribunal a document identifying:

(c) the matters and issues on which:

(i) they are in agreement; and

(ii) they differ.

(d) that an expert witness be asked to review the opinion of another expert and to state in a report whether the witness wishes to modify an earlier opinion they have provided in light of the opinion of the other expert;

(e) that the evidence of two or more expert witnesses be taken in a particular sequence, or with the experts together, each being asked in turn to answer, questions relevant to the matter put by the Tribunal or by the parties or by both.

70. Limit on number of experts

(1) Except with the permission of the Tribunal, a party may not rely on more than 3 experts of any kind in a proceeding or proceedings which are heard at the same time.

(2) Except with the permission of the Tribunal, a party may not rely on more than 1 expert witness, including a health practitioner as defined by the *Return to Work Act 2014*, in the same field of expertise. In the case of a health practitioner who is medically qualified, this means a person qualified to practice in a particular area or specialty of medicine or surgery.

71. Shadow experts

(1) A shadow is an expert who –

(a) is engaged to assist with the preparation or presentation of a party's case but not on the basis that the expert will, or may, give evidence at the trial; and

(b) has not previously been engaged in some other capacity to give advice or an opinion in relation to the party's case or any aspect of it.

(2) An expert will not be regarded as a shadow expert unless, at or before the time the expert is engaged, the expert gives a certificate certifying that:

(a) the expert understands that it is not his or her role to provide evidence at the trial; and

(b) the expert has not been previously engaged in any other capacity to give advice or an opinion in relation to the party's case or any aspect of it.

(3) Evidence of a shadow expert is not admissible at the trial unless the Tribunal determines that there are special reasons to admit the evidence.

(4) If a party engages a shadow expert, the party must:

(a) notify the other parties of:

(i) the engagement; and

(ii) the date of the engagement; and

(iii) the name, address and qualifications of the relevant expert; and

(b) serve copies of the expert's certificate under sub-rule (2) on the other parties.

(5) The notification must be given:

(a) if the engagement takes effect before the time for disclosing expert reports expires, before the time expires;

(b) in any other case, as soon as practicable after the engagement takes effect.

PART 15 - Supplementary panels and referrals to experts or special referees

72. Supplementary panels and members

In proceedings under legislation permitting the Tribunal to sit with supplementary panel members, the President will generally determine that the Tribunal will sit with such members if requested to do so by one or more of the parties, unless the President is satisfied that it would be of no advantage for the Tribunal to sit with supplementary panel members.

73. Experts and special referees

The remaining rules in this Part apply to the referral of a question by the Tribunal to an expert under s 35 of the SAET Act or to a special referee under s 60 of the SAET Act.

74. Referral on Tribunal's initiative

If the Tribunal proposes to appoint an expert or special referee on its own initiative, the Tribunal will first obtain the views of the parties in writing or at a directions hearing.

75. Referral at request of the parties

(1) If the parties jointly seek the referral of a question to an expert or to a special referee, the parties must apply in an approved form for appropriate directions to be made by consent.

(2) An application for directions under this rule must contain:

(a) the name of the proposed expert or special referee, details of their expertise, and confirmation that they have agreed to accept the referral; and

(b) the questions to be considered or determined, or the task to be performed, by the expert or special referee; and

(c) the date by which any documents (which must be clearly identified in the application) are to be provided to the expert or special referee and by whom they are to be provided; and

(d) the date by which the expert or special referee is to complete any report or determination.

(3) Following receipt of the application for directions, the Tribunal may make an order referring a question to the expert or special referee, or may refer the application to a directions hearing for decision.

(4) The Tribunal may decline to refer a question to an expert or special referee if the terms of the referral appear to be outside the proposed expert or special referee's expertise or for such other reason as the Tribunal thinks fit.

PART 16 - Costs

A. Costs Generally

76. Awarding and assessing costs

(1) In any proceeding where a determination of the amount of the costs of a party is required, the following principles must be adopted:

(a) parties are expected to take all steps necessary to deal with or consolidate all issues in dispute between them, and deal with or consolidate all proceedings before the Tribunal, so as to avoid multiple hearings;

(b) the type and amount of work performed will be measured by what is considered to be reasonable by a prudent and properly advised, but not overly cautious litigant;

(c) any costs payable to an officer or employee of an industrial association will be assessed as the Tribunal considers appropriate.

(2) A registrar of the Tribunal is authorised to constitute the Tribunal for the purposes of this Part.

77. Record required to be kept and file produced

(1) A party to a proceeding must maintain an adequate record of the party's costs in respect of the proceeding in accordance with the Higher Courts Scale of the Uniform Civil Rules being the relevant Supreme Court Scale.

(2) A record of costs must enable the party to formulate a claim for costs in accordance with rules 79, 81 and 86(2).

(3) A lawyer acting for a party must maintain an adequate record of the party's costs on the party's behalf and is not entitled to charge a fee for doing so.

(4) If the Tribunal requires a lawyer's file and supporting documents in connection with an adjudication of costs, the lawyer must produce all such documents to the Registry on request.

(5) A lawyer must be able to produce the lawyer's file and supporting documents to the adjudicator, if required, at an adjudication of costs.

(6) If the lawyer ordinarily retains only an electronic file, and the Tribunal requires a copy of the file, the lawyer must produce a copy of the file electronically and in a format convenient for the Tribunal to be able to download and access the data.

78. Consequences of non-compliance with the requirement to keep record and produce file

If a party fails to maintain an adequate record of the party's costs the Tribunal may:

(a) decline to award costs in favour of the party or reduce the costs awarded in favour of the party by such amount as it thinks fit; or

(b) decline to adjudicate the quantum of costs awarded in favour of the party or reduce an award of costs by such amount as it thinks fit.

79. The relevant costs scale

The relevant scale of costs for the purpose of an adjudication of costs in the Tribunal is the Higher Courts costs scale of the Supreme Court of South Australia together with such adjustments as may be made to such scale from time to time.

80. Costs may be ordered at any stage

(1) The Tribunal may make an order for costs in favour of a party or a non-party or against a party or non-party at any stage of a proceeding up to and after the final determination of the proceeding.

(2) If the Tribunal determines that it does not have jurisdiction to hear and determine the substantive proceeding, the Tribunal may nevertheless order that a party pay costs in relation to the proceeding.

81. Costs orders

Where not precluded from doing so from a relevant Act:

(a) The Tribunal may order that costs are awarded on a party/party basis, a solicitor/client basis or on some other basis specified by the Tribunal.

(b) The Tribunal may order that interest is payable on an award of costs in respect of a time before a decision is entered for the costs.

(c) The Tribunal may order that costs, including any interest, are awarded on a lump sum or a partial lump sum basis.

(d) The Tribunal may order that the costs awarded to a party be set-off against any liability the party may have, including a liability for costs.

82. Presumptive costs

(1) Costs that are reserved but not subsequently the subject of a specific order are to be treated as part of the costs in accordance with any final order as to costs.

(2) The quantum of costs ordered is to be adjudicated if not agreed.

(3) Costs are not able to be adjudicated, and do not become payable, until after a proceeding is finally determined and all final costs orders are made

83. General costs principles

(1) Any rule relating to costs is subject to the overriding discretion of the Tribunal in relation to costs.

(2) Any presumption in rule 82 applies to the extent that the Tribunal does not order otherwise.

84. Discretionary factors

(1) In exercising its discretion as to costs, the Tribunal may have regard to any factors it considers relevant.

(2) Some of the factors referred to in sub-rule (1) may be:

(a) any misconduct or unreasonable conduct of a party or a representative of a party in connection with a proceeding;

(b) any breach by a party of overriding obligations, the Rules or an order of the Tribunal;

(c) the making or not making of an offer by a party to resolve a proceeding;

(d) the non-acceptance by a party of an offer made by another party to resolve a proceeding;

(e) the value and importance of the relief sought or obtained.

85. Pre-adjudication steps

(1) Before seeking an adjudication of costs, a party must make a genuine offer to the party liable to pay costs (the liable party) in an attempt to agree the amount of costs payable.

(2) A genuine offer must:

(a) be in writing;

(b) state the amounts claimed for any solicitor costs;

(c) state the amounts claimed for any counsel fees;

(d) state the amounts claimed for any external disbursements; and

(e) make an offer of a fixed sum for the total amount of the costs, counsel fees and external disbursements which remains open for acceptance within 21 days.

(3) A recipient of an offer made under sub-rule (2) must respond within 21 ~~14~~ days by:

(a) accepting the offer;

(b) making a counter offer of a fixed sum for the total amount of the costs, counsel fees and external disbursements; or

(c) offering to meet within 14 days to negotiate the amount of costs payable.

86. Seeking an adjudication of costs

(1) A party may seek an adjudication of costs following the making of an order for costs, or by operation of the Rules, by filing and serving a claim for costs in an approved form upon the liable party.

(2) A claim for costs must:

(a) unless the Registrar or a Tribunal member permits it to be in some other form, be in a schedule in either Microsoft Word format or Microsoft Excel spreadsheet format;

(b) attach invoices for counsel fees and all external disbursements.

(3) A party seeking costs must, if a claim for costs proceeds to an adjudication:

(a) at the request of the liable party, produce for inspection any documents on which the party seeking costs proposes to rely; and

(b) if ordered by the Tribunal, identify any documents relevant to the claim that are not produced because of a claim of privilege which is not waived.

(4) In the alternative to filing and serving a claim for costs under sub-rule (1), a party may seek an adjudication of costs by filing and serving upon the liable party, an application for directions.

(5) An application for directions and affidavit filed and served under sub-rule (4) must contain sufficient detail to enable the Tribunal to make an award of costs.

87. Response to a claim for costs

(1) The liable party must, within 28 days after service upon it of a claim for costs, file and serve a response to a claim for costs (response) in an approved form which reproduces the claim for costs in a schedule in Microsoft Word format; and

(a) Complete the response liability column in the schedule for each item by either:

(i) admitting liability;

(ii) admitting liability to a specific extent; or

(iii) denying liability and succinctly identifying the reason for the denial; and

(b) complete the response quantum column in the schedule for each item (on the assumption that liability exists for the item) by either:

(i) admitting the quantum claimed; or

(ii) identifying what the liable party contends is the recoverable quantum and succinctly identifying the reason for the contention;

(2) If the liable party in its response does not respond to a particular item of costs in the schedule, in the manner required by sub-rule (1)(a), the item will be taken to be admitted in full.

(3) If the liable party fails to file and serve a response in accordance with sub-rule (1), the party seeking costs may request the entry of a costs judgment for the total amount shown in the claim for costs, counsel fees and external disbursement by filing an application to the Registrar in an approved form and an affidavit of proof of service proving service of the claim for costs on the liable party.

(4) A party may request entry of an interim costs judgment for the total amount admitted or taken to be admitted by the liable party in a response by filing an application with the registry in an approved form.

(5) Upon the Registrar or Tribunal member being satisfied that the party seeking an order for costs has provided sufficient information and documentation to establish the reasonableness of the amount claimed, the Registrar or Tribunal member presiding over an adjudication of costs may enter an administrative costs judgment for the appropriate amount upon the filing of a request by a party under sub-rule (3) or (4).

88. Reference for adjudication

(1) If a claim for costs is not able to be resolved, the costs issue may be referred for adjudication by filing an application to the Registrar in an approved form.

(2) The Tribunal member assigned to adjudicate costs may convene a hearing in order to do so or to make orders or give directions about the adjudication.

(3) The parties in a disputed costs adjudication are to confer before the adjudication to attempt to resolve, limit or clarify the items of costs in dispute and to report to the Tribunal on the result at the commencement of the adjudication.

89. General costs adjudication principles

(1) If the same law firm represents multiple parties, unless special circumstances exist, costs will not be allowed separately for each party but will be allowed on the basis of the work necessary and reasonable to represent the parties collectively.

(2) A representative of a party shall not charge excessive costs. Costs charged at greater than the Supreme Court scale of costs, as adjusted from time to time, shall, unless there are exceptional circumstances, be regarded as excessive.

(3) If a representative of a party proposes to charge for work performed in a proceeding before the Tribunal at a rate in excess of the Supreme Court scale of costs, an ex-parte application for directions supported by an affidavit seeking dispensation from sub-rule (2) and explaining what the exceptional circumstances are, must be filed in the registry.

(4) If an adjudication of costs is adjourned:

(a) as a result of the default of a party, the party should bear the costs; or

(b) as a result of the default of a lawyer, the lawyer should bear the costs.

90. Delay

If a party unduly delays bringing a claim for costs and the liable party suffers prejudice as a result, the Tribunal may:

(a) not allow interest on the claim for costs (whether in whole or in part);

(b) disallow the claim for costs in whole or in part;

(c) assess compensation for the delay in favour of the liable party and reduce the costs awarded by that amount; or

(d) reduce the amount allowed to which the party would have been entitled if there had been no delay.

Note: ordinarily a period of time of more than three months from the date of order relating to costs will be treated as undue delay. However, particular circumstances including appeal proceedings or other proceedings, which are interrelated as to costs, may constitute a good reason as to why, nevertheless, there is not undue delay.

91. Counsel fees

(1) The counsel fee indicator of the Supreme Court and District Court of South Australia may be used as a guide to the exercise of the discretion in respect of counsel fees.

(2) The counsel fee indicator is a guide only and does not fetter the exercise of the discretion of the Tribunal in a particular case.

92. Powers at an adjudication of costs

(1) When adjudicating costs an adjudicator has the same powers the Tribunal has in relation to a proceeding in the Tribunal.

(2) An adjudicator may order or take evidence (on affidavit or orally), require the production of documents, require the attendance of witnesses or make orders about the participation of persons interested in the adjudication.

(3) An adjudicator is not bound by the rules of evidence and may decide questions by estimation or by any other expedient means.

(4) Without affecting the generality of sub-rule (1), an adjudicator may:

(a) require a party to produce its record of costs and disbursements and any other material relevant to the adjudication (subject to any claim for privilege);

(b) require a party to provide details of any item the subject of a claim for costs;

(c) make interim orders;

(d) order repayment of any overpayment of costs; or

(e) make any orders that might be made on a directions hearing in a proceeding.

93. Methods of adjudication

(1) An adjudicator may use any one or more of the following methods to undertake an adjudication:

(a) a lump sum assessment, or otherwise determination of the amount of costs to be awarded in a wholesale manner, rather than undertaking an item by item assessment;

(b) an item by item assessment;

(c) assessments in successive stages;

(d) separate assessments of different components of the costs claimed; or

(e) any other method.

(2) An adjudicator may:

(a) accept an undisputed item of costs without enquiry;

(b) determine an issue in dispute;

(c) refer an issue in dispute to mediation or arbitration;

(d) refer an issue in dispute to an expert for enquiry and report;

(e) order that an item by item adjudication be undertaken on a future occasion and that the parties take steps in preparation for the adjudication; or

(f) make any order or further order that the adjudicator thinks fit.

(3) If an item by item adjudication is ordered, the liable party must file and serve an updated response to a claim for costs in an approved form which:

(a) substitutes the heading “amount disallowed” for the heading “offer” in the relevant column of the schedule; and

(b) adds any additional columns or particulars ordered by the adjudicator.

94. Orders

(1) During or after an adjudication, an adjudicator may make a provisional order:

(a) determining a specific issue in dispute;

(b) allowing or disallowing a specific item;

(c) fixing the amount of costs, or a specified component of costs, to which the party is entitled; or

(d) that interest be payable on an award of costs in respect of a period before a costs decision is entered for the costs.

(2) During or after an adjudication an adjudicator may make a non-provisional order:

(a) determining a specific issue in dispute;

(b) allowing or disallowing a specific item;

(c) fixing the amount of costs or a specified component of costs, to which the claimant is entitled; or

(d) that interest be payable on an award of costs in respect of a period before a costs decision is entered for the costs.

95. Costs of adjudication

(1) Subject to sub-rule (2), in a proceeding where a party is entitled to an award of costs, that party will ordinarily be entitled to the reasonable costs of an adjudication of costs.

(2) The Tribunal may make any order it thinks fit concerning payment of the costs of an adjudication, and in making such an order, may take the following matters into consideration:

(a) the overall result of the adjudication;

(b) a comparison between the result of the adjudication and the parties' respective positions prior to the adjudication;

(c) a comparison between the result of the adjudication and any offer made by a party in relation to costs prior to finalising the adjudication process;

(d) the relative success or failure of the parties in relation to disputed items; or

(e) the relative number of items, and their respective quantum, in respect of which the amount claimed was disallowed.

96. Review of provisional order

(1) If an adjudicator makes a provisional order, a party to the adjudication may, within 14 days after the date of the provisional order, request a review of the provisional order by filing and serving an application to the Registrar.

(2) If no party seeks review of a provisional order within 14 days of it being made, the provisional order becomes a non-provisional order.

(3) If a party requests a review of a provisional order within 14 days of it being made, the adjudicator will convene a hearing and give notice of the hearing to all parties to the proceeding in a prescribed form.

(4) An adjudicator shall conduct a review under this rule and will consider any provisional order which is the subject of the review.

(5) An adjudicator conducting a review under this rule may confirm or vary a provisional order, which then becomes a non-provisional order.

97. Entry of decision

A non-provisional order and a provisional order that becomes a non-provisional order are decisions of the Tribunal.

B. Costs in proceedings under the Return to Work Act 2014 (SA)

98. Limit on costs able to be charged by a representative

(1) In a proceeding under the *Return to Work Act 2014* a representative of a party shall not charge excessive costs. Costs charged at greater than the Higher Courts costs scale of the Supreme Court of South Australia as varied from time to time shall, unless there are exceptional circumstances, be regarded as excessive.

(2) If a representative of a party proposes to charge for work performed in a proceeding before the Tribunal at a rate in excess of the Higher Courts costs scale of the Supreme Court of South Australia, an ex-parte application for directions supported by an affidavit seeking dispensation from sub-rule (1) and explaining what the exceptional circumstances are must be filed in the registry.

(3) A representative of a worker or registered employer must provide their client copies of this rule and of s 107 of the *Return to Work Act 2014* within 7 days of commencing to act in respect of any proceeding under that Act.

(4) If a party believes that their representative has caused costs:

(a) to be incurred improperly or without reasonable cause; or

(b) to be wasted by undue delay, negligence or by other misconduct or default;

(c) under s 107(2) of the *Return to Work Act 2014*, the party is to advise a registrar of the complaint in writing and the registrar shall then refer the matter to a Presidential member to deal with the complaint in accordance with s 107 of the *Return to Work Act 2014*.

(5) A registrar is authorised to inform workers generally of this rule and of the actions a worker may take if the worker believes that the amount of costs being charged is excessive or that an order under s 107 of the *Return to Work Act 2014* should be made.

(6) A proceeding under s 107 of the *Return to Work Act 2014* may be initiated by a party or by the Tribunal.

(7) The requirements of sub-rules (3), (4), (5) and (6) do not apply to a proceeding commenced before 1 July 2015.

(8) If a party believes that their representative has caused costs payable under s 107(2) of the *Return to Work Act 2014*:

(a) to be incurred improperly or without reasonable cause; or

(b) to be wasted by undue delay, negligence or by other misconduct or default;

the party is to advise the Registrar of that in writing and the Registrar shall then refer the matter to a Presidential member to deal with the matter in accordance with s 107 of the *Return to Work Act 2014*.

(9) The Tribunal may, of its own motion, address circumstances that appear to come within the ambit of s 107 of the *Return to Work Act 2014*.

PART 17 - Parties, representation of parties and assistance to other persons

99. Trusts

(1) A trustee may bring or defend a proceeding in the name of the trust.

(2) A proceeding to which this rule applies will be taken to have been commenced by or against all the trustees of the trust.

(3) A trustee that brings an action in the name of the trust must have the authorisation of all of the trustees to bring the action and must file in the Tribunal with the initiating application a list of the trustees of the trust at the time the cause of action is alleged to have arisen.

(4) A trustee that defends a proceeding in the name of the trust must, on taking the first step in the action, file in the Tribunal a list setting out the names and addresses of the persons who were trustees of the trust at the time the cause of action is alleged to have arisen.

100. Procedure for joinder or disjoinder of a party

(1) The Tribunal may order that a person be removed as a party to a proceeding before the Tribunal if the Tribunal is satisfied that it is in the interests of the efficient administration of justice to do so after all parties have had an opportunity to be heard on the question.

(2) The Tribunal may make an order to join or remove a person as a party to a proceeding:

(a) on its own initiative or on the application in an approved form of any person; and

(b) without notice to the person to whom the order relates.

101. Intervention in a proceeding

(1) Where a person other than the Attorney-General seeks to intervene in a proceeding under s 50 of the SAET Act or any relevant Act, they must file an application in the approved form and serve a copy of the application on all other parties within 3 business days of the filing.

(2) The Tribunal may grant the application to intervene on such terms as it considers just, and may vary or discharge any permission to intervene at any time.

(3) An oral application for permission to intervene may be made at any time during a proceeding, subject to the right of any party asserting disadvantage as a consequence of the application having an opportunity to be heard in that regard.

(4) The Tribunal may continue to hear a proceeding while considering an application to intervene.

102. Representation of a company or the Crown

(1) The Tribunal may, on application made on behalf of a company, give permission for representation of that company by a director or an officer of the company providing the Tribunal is satisfied that the person who is to represent the company has power to bind it in relation to the conduct of a proceeding.

(2) The Tribunal may, on application made on behalf of the Crown or an agency or instrumentality of the Crown, give permission for the entity to appear at a compulsory conciliation conference, settlement conference or mediation by a duly authorised employee or officer who is familiar with the issues and who has the authority to bind the entity to any agreement.

103. Ceasing to act without instructions from a party

(1) Where a representative of a party does not have instructions to cease acting for a party but seeks to do so, the representative must file:

(a) an application for directions to cease acting; and

(b) a supporting affidavit which sets out the reasons why the representative seeks to cease to act.

(2) The application and supporting affidavit must be served on the party the representative seeks to cease acting for within 3 business days.

104. Application for permission to represent a party

(1) In dealing with an application under s 51(1)(c) of the SAET Act for permission to be granted to a person to represent a party to proceedings, the Tribunal is to have regard to:

(a) whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal; and

(b) whether the proposed representative will deal fairly and honestly with the Tribunal and other persons involved in the proceeding; and

(c) depending on the nature of the representative or his or her relationship to the party, whether the proposed representative has the consent of and sufficient authority to bind the party; and

(d) whether the proposed representative is likely to be a witness in the proceeding; and

(e) any other circumstances considered relevant.

(2) In giving permission under s 51(1)(c), the Tribunal may impose such conditions in relation to the representation as the Tribunal thinks fit.

(3) Only a Presidential member can give permission under s 51(1)(c) of the SAET Act for representation by someone:

(a) who has been found guilty of professional misconduct (however described) or of another breach of professional or occupational standards, in a disciplinary proceeding under a law of a State or Territory or the Commonwealth of Australia, or under the rules of a professional or occupational association or other body relevant to the person); or

(b) who has been declared for the purposes of s 39 the *Supreme Court Act 1935* to have persistently instituted vexatious proceedings, or

(c) who has committed contempt of the Tribunal or some other court and has not purged that contempt.

(4) The Tribunal may revoke permission granted to a person to represent a party to a proceeding if:

(a) the party no longer consents to the person representing the party; or

(b) the person does not have the qualities referred to in this rule to act as the party's representative; or

(c) the party is, or has become, incapable of instructing the representative; or

(d) on any other basis which the Tribunal considers justifies the revocation.

105. Application for assistance by a friend

(1) An application under s 51(2) of the SAET Act for a person appearing before the Tribunal (the person) to be assisted by another person as a friend (the assistant) must be made by an application for directions.

(2) In dealing with the application, the Tribunal is to have regard to:

(a) whether the assistance may promote the interests of the person; and

(b) whether the assistance may facilitate the just, quick and efficient resolution of the real issues in the proceeding; and

(c) whether the assistant will deal fairly and honestly with the Tribunal and other persons involved in the proceeding; and

(d) any disability or other factor that impedes the person's capacity to fully participate in the hearing; and

(e) the nature and seriousness of the interests of the person that are affected by the proceeding; and

(f) any other circumstances the Tribunal considers relevant.

(3) In giving permission for a person to provide assistance, the Tribunal may impose such conditions in relation to the assistance as the Tribunal thinks fit.

(4) Only a Presidential member can give permission for assistance by someone:

(a) who has been found guilty of professional misconduct (however described) or of another breach of professional or occupational standards, in a disciplinary proceeding under a law of a State or Territory or the Commonwealth of Australia, or under the rules of a professional or occupational association or other body relevant to the person); or

(b) who has been declared for the purposes of s 39 the *Supreme Court Act 1935* to have persistently instituted vexatious proceedings, or

(c) who has committed contempt of the Tribunal or some other court and has not purged that contempt.

(5) The Tribunal may revoke permission granted to a person to assist a party to proceedings at any time if the Tribunal is satisfied that there are grounds to do so.

106. Representation

Where a party to a proceeding under the *Return to Work Act 2014* seeks to be represented by an officer or employee of an industrial association acting in the course of employment with that industrial association, the Tribunal may request proof of the representative's standing including:

(a) a copy of the constitution of the industrial association;

(b) a copy of the contract of employment or other document which describes the legal relationship between the representative and the industrial association;

(c) any other document or thing reasonably required to assist the Tribunal to determine whether the representative comes within s 105 of the *Return to Work Act 2014*.

107. Eligibility to be litigation guardian

(1) Subject to sub-rule (2), the following persons are eligible to be a litigation guardian for a person under a legal incapacity:

(a) a parent or guardian of the person under a legal incapacity;

(b) a person who holds an enduring power of attorney authorising them to act on behalf of the person under a legal incapacity;

(c) the Public Trustee of South Australia or an equivalent Public or State Trustee of another State or Territory or a licensed trustee company within the meaning of Part 5D of the *Corporations Act 2001* having authority to manage the affairs of the person under a legal incapacity that extends to acting as litigation guarding in the proceeding; or

(d) a person approved by the Tribunal.

(2) A person is not eligible to be a litigation guardian for a person under a legal incapacity if:

(a) the person is a person under a legal incapacity;

(b) unless the Tribunal otherwise orders, the person has or would have an interest in the proceeding adverse to that of the person under a legal incapacity; or

(c) the Tribunal so orders.

108. Failure to appoint a litigation guardian

(1) A failure to appoint a litigation guardian does not invalidate a proceeding by or against a person under a legal incapacity.

(2) On becoming aware that a party is a person under a legal incapacity, the Tribunal may make such orders concerning steps already taken in the proceeding, as it thinks fit, on such conditions as it thinks fit, including, without limitation, orders to:

(a) set aside or vary any step taken in the proceeding; or

(b) set aside or vary any order made or judgment granted in the proceeding.

109. Proceedings involving litigation guardians

(1) Unless the Tribunal otherwise orders, an action or appeal by a person under a legal incapacity must be brought by an eligible person as litigation guardian for the person under a legal incapacity.

(2) An eligible person may bring an action or appeal as litigation guardian for a person under a legal incapacity if a guardian certificate is filed by the person immediately after filing of the originating process.

(3) Subject to sub-rule (4), an action or appeal may only be instituted against a person under a legal incapacity by naming both the person and a litigation guardian for the person as a respondent or interested party and filing a guardian certificate at the same time.

(4) A proceeding may be instituted against a person under a legal incapacity without naming a litigation guardian, but no further steps may be taken against or in respect of the person unless and until a litigation guardian is appointed.

(5) The Tribunal may at any stage appoint a person who signs a guardian certificate as a litigation guardian for a party to a proceeding, including in addition to or instead of any existing litigation guardian, or remove any litigation guardian on such conditions and make such consequential or transitional orders as the Tribunal thinks fit.

(6) The person under a legal incapacity is treated as the substantive party to the proceeding and the litigation guardian is treated as a quasi-attorney for the person under a legal incapacity.

(7) Unless the Tribunal otherwise orders, a litigation guardian may take any step in a proceeding that could be taken by the person under a legal incapacity if the person had capacity to act in their own right.

(8) Unless the Tribunal otherwise orders, any right or liability to receive or pay costs in a proceeding vests in the person under a legal incapacity and not in the litigation guardian.

(9) This rule does not affect the question whether a litigation guardian is entitled to be indemnified out of the assets of a person under a legal incapacity.

(10) In these and all other respects the roles and responsibilities of litigation guardians are guided in accordance with the practice and procedure of the District Court under the Uniform Civil Rules as governed by general legal principles.

110. Proceedings involving persons under a legal incapacity

(1) A resolution of a proceeding to which a litigation guardian or person under a legal incapacity is a party is not binding unless the Tribunal approves the terms of the resolution.

(2) Where orders are sought by consent in a proceeding to which a litigation guardian or a person under a legal incapacity is a party, the orders proposed must include:

(a) specific details of who is to receive any settlement funds;

(b) an explanation why that person is an appropriate recipient; and

(c) whether an administrator has been appointed on behalf of the person under a legal incapacity.

(3) In considering whether to grant the orders sought the Tribunal may make such inquiries and seek such further information as it sees fit.

(4) Any money to which a person under a legal incapacity is entitled under an agreement for the resolution of a proceeding approved by the Tribunal must be dealt with in accordance with orders of the Tribunal from time to time.

(5) Where counsel has acted on the instructions of a litigation guardian in settlement discussions, alternative counsel should be engaged to provide advice about the terms of the resolution reached unless otherwise ordered.

PART 18 - Fair Work Act

A. Monetary Claims

111. Service of proceedings

(1) In any proceeding under s 9 of the *Fair Work Act 1994*, the Tribunal is to serve the proceeding on a respondent.

(2) In any proceeding under s 10 of the *Fair Work Act 1994*, an applicant is to serve the proceeding on a respondent.

112. Attendance at a compulsory conciliation conference

(1) All parties to a monetary claim under s 9 or s 10 of the *Fair Work Act 1994* must attend a compulsory conference.

(2) Sub-rule (1) does not apply if a monetary claim is made on behalf of multiple applicants in which case one representative of the applicants and at least 1 applicant must attend the conference.

(3) If an applicant fails to attend a compulsory conference or a subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.

B. Industrial Proceedings and Disputes

113. Enterprise Agreements

(1) Parties seeking approval by the Tribunal of an enterprise agreement are to file an electronic copy of the agreement in Microsoft word format, an electronic copy executed by or on behalf of all parties to the agreement, and an application for approval in the approved form.

(2) Where the Tribunal considers that the enterprise agreement is capable of being approved without a hearing, a notice will be issued to the parties and any representatives to that effect and will be published on the Tribunal website.

(3) Where a notice is issued under sub-rule (2) and a person who is eligible to intervene in any proceeding that may be conducted in relation to the approval wishes to be heard, that person must advise the Tribunal and the other parties in writing of their desire to be heard within the period specified in the notice.

(4) Where written notice of a desire to be heard is provided under sub-rule (3), the application will proceed to a formal hearing in accordance with directions given by the Tribunal.

(5) Except in the case of a provisional enterprise agreement, employer parties to an enterprise agreement must upon receipt copy of any notice issued by the Tribunal, display the notice in accordance with this rule on a noticeboard at the relevant workplace and circulate the notice by email to all affected employees.

114. Applications for interpretation of an award or agreement

(1) An application for the interpretation of an award or an agreement is to be made in the approved form by any party bound by, or who claims to derive an interest in or claims a benefit from, the award or agreement.

(2) The application must set out:

(a) the relevant facts relating to each clause of the award or agreement in relation to which an interpretation is sought and state the reasons for seeking the interpretation; and

(b) the particulars of all other parties who have or who may have an interest in the application.

115. Award proceedings

(1) The Tribunal may make orders regarding service and/or publication of any application for variation or rescission of an award or an application for a new award.

(2) The Registrar must settle all minutes of awards (including variations, rescissions and any orders affecting awards) made by any Tribunal member.

(3) Subject to any order to the contrary made by the Tribunal, the Registrar must give all interested parties reasonable notice of the date of the proposed settlement of the minutes of an award, and hear submissions from any parties relating to the award.

(4) Before final settlement of the award, a registrar must if requested by a party, or may otherwise on his or her own initiative, refer the matter to the Tribunal member who heard and determined the matter for advice as to the proper form of the award.

(5) A registrar must publish a notice on the Tribunal website to advise of the Tribunal making a determination in an award proceeding within 7 days of the date of the determination.

116. Outworker remuneration claims

A claim by an outworker for an amount payable by an apparent responsible contractor under s 99G of the *Fair Work Act 1994*, and a claim by an apparent responsible contractor against a related employer for recovery of an amount paid to an outworker under s 99H of that Act, will be made and dealt with for the purposes of the Rules as if it were a monetary claim under s 9 of that Act.

117. Unfair dismissal proceedings

(1) The parties to an unfair dismissal proceeding under the *Fair Work Act 1994* must attend a compulsory conciliation conference under s 43 of the SAET Act.

(2) If an applicant fails to attend a compulsory conciliation conference or a subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.

(3) If an applicant files an application under s 106 of the *Fair Work Act 1994* and in response to any clarification sought by the Tribunal regarding their intention to proceed, does not confirm such an intention with 10 days, the application may be deemed to be discontinued without further notice.

(4) Where an adjudicating authority under s 106 of the *Fair Work Act 1994* or other relevant Act purports to refer an application to the Tribunal pursuant to s 106 of the *Fair Work Act 1994*, the proceeding will be commenced by the adjudicating authority filing a statement which sets out the nature of the application made and the parties said to be involved.

118. Industrial disputes

(1) Where a party seeks the assistance of the Tribunal to resolve an alleged industrial dispute the party must notify the Tribunal in the approved form.

(2) A party may make an oral request for the assistance of the Tribunal under this rule if the matter is urgent and if so, the party must provide a registrar with the detail

required by the approved form and submit the approved form within 2 business days of making the oral application.

(3) Immediately after giving notice under sub-rule (1) or (2), the party making the application shall serve the approved form on all other parties to the dispute.

C. Registered Agents

119. Application for Registration

An application for registration as a registered agent under s 26 of the *Fair Work Act 1994* must be made in the approved form.

D. Registration of Associations - Locally Based Associations

120. Application for Registration

(1) An association wishing to obtain registration under Chapter 4, Part 2 of the *Fair Work Act 1994* must file in the registry an application in the approved form together with a certified copy of the rules of the association and a statutory declaration by the president or secretary of the association in the approved form.

(2) The members of the applicant association must have subscribed to, or otherwise agreed to be bound by, written rules constituting the association and regulating its affairs.

(3) A majority of the members present and voting at a meeting of the association specially called under this rule must have resolved by simple majority that an application be made for its registration under the *Fair Work Act 1994*. Notwithstanding any rule of the association to the contrary, 14 days' notice in writing must be given by the committee of management of the association by prepaid post to all members at their last known address or by advertisement in a manner approved by the Tribunal. Not less than 5% of the total number of the members entitled to attend and vote at a general meeting of the association under its rules will constitute a quorum.

(4) In order to comply with the requirements of s 124 of the *Fair Work Act 1994*, the rules of an association must:

(a) specify:

(i) the name of the association;

(ii) the nature of its membership;

(iii) the purpose for which it is formed; and

(b) provide for the following matters in relation to the administration of the association:

(i) the mode by which and terms upon which members may be admitted or their membership will cease or be terminated;

(ii) the automatic termination of the membership of any member who ceases to be a person eligible for membership of the association;

(iii) the maintenance of a register of current members;

(iv) the constitution of a committee of management and the election, appointment and removal of its members;

(v) the powers and duties of the Committee of Management and the control of it by the members either in general meeting, or in district meetings or by a general governing body or otherwise;

(vi) the election and removal of officers and their respective powers and duties;

(vii) the maintenance of a register of officers;

(viii) the maintenance of a registered office and the hours during which it will be open to the public;

(ix) the control of the property and investment of the funds of the association, and the mode by which funds may be disbursed whether for ordinary and extraordinary purposes;

(x) the mode by which rules of the association may be rescinded, varied or added to;

(xi) the mode by which the association may be dissolved;

(xii) the calling of and procedure at general meetings;

(xiii) the appointment of a registered company auditor who is not an officer or employee of the association.

(5) The conditions set out in sub-rules (2), (3) and (4) are the prescribed conditions for the purposes of s 122(1) of the *Fair Work Act 1994* and are to be met unless waived in accordance with sub-rule (6).

(6) The following provisions apply to an application for waiver of a condition:

(a) an association seeking waiver of a condition must apply in writing to the Tribunal specifying any prescribed condition in relation to which waiver is sought.

(b) the Tribunal will exercise its power to waive any prescribed condition on such terms and conditions it considers proper.

(c) the Tribunal will sign and issue a written determination if waiver is granted under this sub-rule.

(d) Compliance by an association with a written determination made under sub-rule 6(c) will constitute compliance with the prescribed conditions.

(7) The rules of an association may also provide for any other matter not contrary to law.

121. Alteration to rules of an association

(1) An application to register an addition or alteration to or a rescission of the rules of an association must be in the approved form.

(2) On receipt of an application for alteration of the rules of an association, the Tribunal may cause a notice of the application to be published on the Tribunal website.

(3) If the Tribunal is satisfied that it is impracticable for an association to alter its rules in accordance with its rules of association, the Tribunal may approve an alteration on such terms it considers appropriate upon an application made to it by the association.

122. Objections to Alteration to Rules

(1) An objection to a proposed alteration will be made, heard and determined as if it were an objection to registration under the Rules, with such modifications as may be necessary.

(2) An objection under this rule must be made within 21 days of the publication of the notice required by s 125 of the *Fair Work Act 1994*.

123. Change of Name

(1) An application for a change of name of an association under s 125(2) of the *Fair Work Act 1994* must be made in the approved form.

(2) The application must have the existing Certificate of Registration of the association attached to it unless the Tribunal waives such requirement on an application made in writing for waiver.

124. Compliance with rules

An application under s 127(1) of the *Fair Work Act 1994* by a member of a registered association, or by a person who has been expelled from membership of a registered association, must be made in the approved form.

125. Accounting Records

For the purposes of s 128 of the *Fair Work Act 1994*, an association must keep such accounting records as are required to correctly record and explain the transactions of the association and the financial position of the association.

126. Amalgamation of Associations

(1) An application to register a body comprised of amalgamating associations as a registered association under s 129 of the *Fair Work Act 1994* must:

(a) be in the approved form;

(b) be accompanied by a copy of the applicant body's rules certified by its President; and

(c) include a statutory declaration of the applicant body's President verifying due compliance with the procedure prescribed by s 129.

(2) A request for the Registrar to conduct a ballot under s 129(4) of the *Fair Work Act 1994* must be made in writing, addressed to the Registrar and signed by the requisite number of members.

(3) A registered association must, at the request of the Registrar, furnish the Registrar with an up to date list of the members of the association with their most recent or last known address.

(4) The Registrar will conduct a ballot using such forms and procedures as the Registrar sees fit.

127. Deregistration of Associations

An application for deregistration of an association is to be made in the approved form.

E. Registration of Associations - Federally Based Associations

128. Application for Registration

An association seeking registration under Part 3 of Chapter 4 of the *Fair Work Act 1994* must file in the registry:

(a) an application in the approved form;

(b) a copy of the rules of the association registered under the *Fair Work (Registered Organisations) Act 2009* (FW(RO) Act) certified by its president or secretary to be the current rules, and, in the case of an association with a South Australian branch or where a branch of an association registered under the FW(RO) Act seeks registration, proof that its rules comply with s 131(2) or (3) of the *Fair Work Act 1994*;

(c) a statutory declaration, in the approved form, by the president or secretary of the association stating:

(i) that a resolution was duly passed by the committee of management of the applicant association authorising the making of an application for registration under Part 3 of Chapter 4 of the *Fair Work Act 1994*, and the date on which the resolution was passed;

(ii) the full names, addresses and occupations of the officers of the association and the offices held by each of them.

129. Change of Name

(1) Where an association registered under s 134 of the *Fair Work Act 1994* changes its name, the secretary of the association must notify the Registrar of the change in writing, providing evidence of the change, within 21 days.

(2) On receipt of the notification, a registrar will cause all relevant records to be altered accordingly.

130. Deregistration of Associations

An application for deregistration of an organisation or a branch of an organisation is to be made in the approved form.

F. Registration of Associations - General

131. Objections to Registration

(1) An objection under s 121 or s 133 of the *Fair Work Act 1994* must be in the approved form and be filed in the registry within 21 days of the publication of the notice required by s 120(2)(a) or s 132(2)(a) of the *Fair Work Act 1994*.

(2) An objection filed under sub-rule (1) must be accompanied by a written statement setting out briefly the facts upon which the objector relies in respect of each ground of objection.

(3) An objector will be restricted to the grounds specified in the notice of objection unless the Tribunal permits otherwise in a further application made by the objector that sets out the objector's further reasons.

(4) Within 7 days after a notice of objection is filed in the registry, the objector must serve a copy of the notice and of the written statement accompanying it on the association applying for registration.

(5) The Tribunal will proceed to hear and determine the application and all objections to it, without limit to its power to adjourn the proceeding from time to time.

132. Certificate of Registration

When an association is registered by the Tribunal under Chapter 4, Part 2 or Part 3 of the *Fair Work Act 1994*, and when the rules of a locally based association are altered by the Tribunal under Chapter 4, Part 2, Division 3 of that Act, a registrar must make an entry in a register book, or electronically, or both.

133. Change of Address

(1) Where an association changes the address of its registered office, the secretary of the association must, within 14 days of such change, notify a registrar in writing of the change of address.

(2) On receipt of the notification, a registrar will cause all relevant records to be altered accordingly.

G. Associations - Conscientious Objection

134. Conscientious Objection

Any certificate granted pursuant to s 118 of the *Fair Work Act 1994* must be in a form approved by the Registrar.

PART 19 - Fire and Emergency Services Act

135. Notice to Chief Officer

A registrar must serve a copy of any initiating application made under the *Fire and Emergency Services Act 2005* on the Chief Officer of the South Australian Metropolitan Fire Service if the Chief Officer is not named on the application as a party.

PART 20 - Public Sector Act

136. Procedure

(1) A review under the *Public Sector Act 2009* must be conducted as quickly, and with as little formality as proper consideration of the matter allows.

(2) Other than in an unfair dismissal proceeding brought under the *Fair Work Act 1994*, no compulsory conciliation conference and no pre-hearing conference as provided for by the SAET Act will take place in a review under the *Public Sector Act 2009*.

PART 21 - Return to Work Act

A. Special jurisdiction to expedite decisions

137. Procedure to be followed

(1) An applicant who believes there has been undue delay in deciding a claim or other matter must complete and file in the registry an application to expedite a decision under s 113 of the *Return to Work Act 2014* in the approved form.

(2) An application to expedite a decision must be accompanied by a copy of any relevant documents, including any prior correspondence from the applicant requesting that the claim be determined.

(3) An application to expedite a decision must be referred to a Commissioner within 2 business days of being filed, and will be listed for hearing within 21 days of being filed, unless a Tribunal member orders otherwise.

(4) On receipt of an application to expedite a decision, a Tribunal member may contact the parties to the application prior to any hearing to seek such details or materials considered necessary to understand or resolve the application.

(5) Where sub-rule (4) applies, a party who provides details or materials to the Tribunal must provide a copy to all other parties.

B. Certain applications for Review

138. Average weekly earnings and reviews of weekly payments

(1) Where an application for review complains about a decision which set average weekly earnings by reference to s 5 of the *Return to Work Act 2014*, and a review or reviews of weekly payments has or have been undertaken under s 46, s 47 or s 60 of the *Return to Work Act 2014* prior to the application for review being filed, any and all such s 46, s 47 or s 60 reviews will also be taken to be the subject of the application for review.

(2) In a proceeding to which this rule applies, if a party files an application for review in relation to both a decision which set average weekly earnings and any s 46, s 47 or s 60 review of that decision, the party will only be entitled to an award of costs for the application for review of the decision which set average weekly earnings.

C. Reconsideration - s 102 Return to Work Act

139. Confirmation of a decision under review

(1) If a compensating authority confirms, under s 102 of the *Return to Work Act 2014*, the decision under review, it must file in the registry a confirmation of decision in the approved form.

(2) The confirmation of a decision under review is a response for the purposes of the Rules.

140. Variation of a decision under review

(1) If a decision under review is varied, either by way of alteration or being set aside, the compensating authority must file in the registry a variation of disputed decision in an approved form which complies with s 102(3) of the *Return to Work Act 2014*.

(2) A variation of a disputed decision is a response for the purposes of the Rules.

(3) If a compensating authority varies a decision, it is to serve the variation of disputed decision on all parties regardless of whether a Notice of Acting has been filed by them.

(4) Any party that receives a variation of disputed decision must respond to it within 14 days in an approved form.

(5) If no party responds to a variation of disputed decision within 14 days, an order will be made by the Tribunal confirming the variation of disputed decision.

(6) If more than 14 days have elapsed from the date a disputed decision is varied and the Tribunal has made an order confirming the variation of the disputed decision, any party that wishes to set aside that order must make an application to do so supported by an affidavit which explains the delay and must serve the application on any other party within 3 business days.

141. Procedure when a varied decision is accepted

If the party that has sought review of a decision accepts the variation of that decision made at reconsideration, the party must advise the Tribunal accordingly in an approved form and request that the Tribunal make an order confirming the varied decision.

142. Procedure when a varied decision is not accepted

(1) If the party that has sought review of a decision does not accept the variation of that decision made at reconsideration, the party must advise the Tribunal within 14 days and at the initial directions hearing in any event.

(2) If another interested party does not accept the variation of that decision made at reconsideration, the party must advise the Tribunal within 14 days and at the initial directions hearing in any event.

143. Extension of time for reconsideration

(1) Where a compensating authority seeks an extension of time in which to reconsider a decision under review pursuant to s 102 of the *Return to Work Act 2014*, it must apply to the Tribunal in an approved form.

(2) The application for extension of time may, at the discretion of the Registrar, be determined either with or without consultation with the parties.

(3) If an extension of time for reconsideration is granted by the Registrar, the amended date on which the reconsideration is due will be the date on which a response is due under the Rules.

144. Effect of a failure to reconsider a decision under review

If a compensating authority fails to complete reconsideration of a decision under review within the time prescribed by the Act or in such further time as ordered by the Registrar, the decision under review will be taken to have been confirmed.

D. Independent Medical Advisers

145. IMA Guidelines

The procedures for referring a medical question for assessment by an independent medical advisor (IMA), the conduct of any medical examination, the provision of a medical report, the payment for any such report and the giving of oral evidence by an IMA must be in accordance with the IMA Guidelines published by the Tribunal.

E. Summonses for medical records

146. Procedure to be followed where medical records are summonsed

(1) In a proceeding under the *Return to Work Act 2014*, a party must not issue a summons for production of medical notes, imaging, reports or other documents ("medical records") concerning the medical history of a person without the permission of the Tribunal.

(2) If the Tribunal grants permission to issue a summons for medical records under this rule the summons must be accompanied by payment of $100 or such other amount as may be prescribed from time to time by a registrar for the purposes of this rule by electronic funds transfer directed to the medical practice from whom the medical records are sought.

(3) After a summons for medical records is issued, a registrar must give the person to whom the medical records relate 7 days, or such lesser time as is ordered by a Tribunal member, to consider the content of the medical records before they are released to the party issuing the summons.

(4) The party to whom the medical records relate may apply to the Tribunal to limit the extent of the disclosure or redact parts of the medical records if the person believes good grounds for making the application exist and those parts of the medical records over which non-disclosure or redaction is sought are not relevant to the proceeding.

(5) A person making an application under sub-rule (4) must tell the other parties to the proceeding the application is being made but the application can be made on an ex-parte basis to a Tribunal member and need not be served on the other parties.

(6) When hearing an application under sub-rule (4) a Tribunal member may have regard to all the medical records which have been produced in answer to the summons when considering the application and may order non-disclosure or redaction if the medical records are not relevant and if it is considered that confidentiality ought to be maintained.

F. Approval of certain settlements

147. Procedure where approval of a settlement is required

(1) Subject to s 47(3) of the SAET Act and s 191 of the *Return to Work Act 2014*, where the parties to a proceeding seek an order of the Tribunal which requires the consent of the Return to Work Corporation of South Australia under s 191 of the *Return to Work Act 2014*, the parties must advise the Tribunal member with conduct of the proceedings that such consent is required or has been given.

(2) In a case to which sub-rule (1) applies, a Tribunal member must not make the order sought unless a Presidential member has approved the order.

(3) A Presidential member acting under sub-rule (2) may order that an application for directions and supporting affidavit be filed and may issue such directions and adopt such procedures considered appropriate.

148. Infants and persons under a legal disability

(1) Where a matter concerns the rights or obligations of an infant or a person under a legal disability, any settlement of the matter must be approved by a Presidential member.

(2) In a matter to which sub-rule (1) applies, a Presidential member may issue such directions and adopt such procedures considered appropriate, including giving a direction that an opinion about the suitability of the settlement be obtained from independent legal counsel.

G. Special applications and notices

149. Applications under s 18 of the Return to Work Act 2014

An application made under s 18(3) of the *Return to Work Act 2014* will proceed to an initial directions hearing under s 43(1) of the SAET Act at which a date for a

compulsory conciliation conference will be given unless a Tribunal member orders otherwise.

150. Applications under s 48(18) of the Return to Work Act 2014

An application by an employer under s 48(18) of the *Return to Work Act 2014* for the Tribunal to direct the Corporation to carry out or expedite a review relating to weekly payments to a worker must be made by an application for directions.

151. Schedule 1 Workers Rehabilitation and Compensation Act disputes

Any proceeding which involves the application of clauses 2, 4 or 5 of Schedule 1 of the repealed *Workers Rehabilitation and Compensation Act 1986* will immediately be referred to a Presidential member for such orders and directions thought necessary having regard to the nature of the proceeding.

152. Notice to be heard

(1) The employer from whose employment a work injury arose or is alleged to have arisen is a party to a proceeding under the *Return to Work Act 2014* by virtue of s 96(d) of the *Return to Work Act 2014* and s 48(1)(f) of the SAET Act.

(2) If the employer from whose employment a work injury arose or is alleged to have arisen, or another party entitled to participate in a proceeding under the *Return to Work Act 2014*, wishes to participate in the proceeding but has not lodged and does not wish to lodge an application for review, the party must file a notice to be heard in the approved form which the Tribunal will serve upon all other parties to the proceeding.

(3) If a party who has filed a notice to be heard fails to attend a conference or hearing without good cause and without providing an explanation for not attending prior to the commencement of the conference or hearing, a Tribunal member may proceed with the conference or hearing as if the notice to be heard had not been filed.

(4) If a party who has filed a notice to be heard fails to attend 2 or more conferences or hearings after filing the notice, a Tribunal member may order that the notice be dismissed and may proceed with the conference or hearing as if the notice to be heard had not been filed.

(5) The Tribunal may permit a party who has filed a notice to be heard to withdraw from a proceeding and dismiss the notice and make any consequential order considered appropriate in the circumstances.

H. Fast Track Stream

153. Eligibility of proceedings to enter the Fast Track Stream

Proceedings which are non-complex and are able to proceed to a hearing in a relatively short time may be placed in and proceed in the Fast Track Stream (FTS) of the Tribunal.

154. Objects of the Fast Track Stream

The objects of the FTS are to:

(a) resolve proceedings under the *Return to Work Act* 2014 that are not complex in an expeditious way;

(b) have proceedings in the FTS available to replace proceedings that are listed for hearing but which resolve or adjourn prior to the hearing date;

(c) simplify and expedite the hearing of non-complex proceedings.

155. Referral

(1) At any time after a proceeding is referred to Hearing and Determination, an application may be made by a party to the proceeding to place the proceeding in the FTS, or the Tribunal may place the proceeding in the FTS of its own motion.

(2) At any time after a proceeding has been placed in the FTS a party to the proceeding may apply to have the proceeding removed from the FTS, or the Tribunal may remove the proceeding from the FTS of its own motion.

156. Criteria

In determining whether a proceeding should be placed in the FTS, the Tribunal will have regard to the following matters:

(a) Whether all parties to the proceeding consent to the placement;

(b) Whether it would be unfair to a party to place a proceeding in the FTS;

(c) Whether the credibility of any witness is in issue;

(d) The advantages and disadvantages of placing the proceeding in the FTS;

(e) Whether the proceeding is likely to be concluded in one or two days;

(f) Whether there is a need for oral evidence to be given in court;

(g) The number of witnesses required to give oral evidence;

(h) The anticipated time taken for each witness to give oral evidence;

(i) The nature and extent of the issues in dispute;

(j) Any other matter the Tribunal considers relevant.

157. Entry into and records of the Fast Track Stream

(1) The Registrar will maintain a record of all proceedings placed in or removed from the FTS.

(2) In a proceeding that has been placed in the FTS, all documents subsequently filed will show in the case heading, immediately above the case number, that the proceeding has been placed in the FTS.

158. Consultation with other parties

A party who seeks to place a proceeding in the FTS must have regard to the objects and criteria of the FTS and must ascertain the attitude of any other party to a proposal to place the proceeding in the FTS before applying to do so.

159. Form of application to enter the Fast Track Stream

(1) A party to a proceeding may, by an application for directions, apply to place a proceeding in, or remove a proceeding from, the FTS.

(2) The application for directions referred to in sub-rule (1) is to be filed and served upon each party to the proceeding.

(3) The application for directions referred to in sub-rule (1) must set out the material particulars relied upon to place a proceeding in, or remove it from the FTS.

(4) The application for directions referred to in sub-rule (1) is not required to be supported by an affidavit, however the Tribunal may, upon application of another party, or of its own motion, require the applicant to file a supporting affidavit.

(5) A party served with an application to have a proceeding placed in or removed from the FTS shall, within 5 business days, file in the registry and serve upon all other parties, a document that sets out its attitude to the application.

160. Preliminary hearing

(1) Upon acceptance of a matter into the FTS, a pre-hearing conference is to be held on a date and time to be fixed by the Registrar and notified to the parties.

(2) The matters to be considered at an FTS pre-hearing conference include:

(a) The prospects of settlement;

(b) Identification of the issues in dispute;

(c) Whether any hearing is a final hearing or an interim hearing;

(d) Giving pre-hearing directions;

(e) Fixing a date of hearing;

(f) If it is proposed that oral evidence be adduced, ascertaining and making a ruling in relation to the number of expert and non-expert witnesses allowed to give oral evidence, the time permitted to ask questions of such witnesses, and whether a witness is required to attend in person to give evidence or provide evidence in some other way.

161. Interlocutory applications

(1) Before making any interlocutory application in an FTS proceeding, a party is required to endeavour to resolve the issue by agreement.

(2) An interlocutory application in an FTS proceeding is to identify concisely, but with sufficient detail, the orders sought and the grounds relied upon.

(3) A supporting affidavit is not to be filed with an interlocutory application but the Tribunal may require the applicant to file and serve a supporting affidavit.

162. Interlocutory hearings

Interlocutory applications and arguments in the FTS will be conducted informally and may be conducted by teleconference or videoconference.

163. Conduct of hearings

(1) The parties to an FTS proceeding, and their lawyers, have a duty to the Tribunal to take all reasonable steps to ensure that hearings proceed as expeditiously and efficiently as possible.

(2) The Presidential member hearing an FTS proceeding may control the conduct of the hearing to identify; the issues in dispute, the parties' respective contentions and the evidence relevant to the issues in dispute.

(3) A Presidential member hearing an FTS proceeding may give directions about:

(a) The issues on which the Tribunal requires evidence;

(b) The nature of the evidence required to decide those issues;

(c) The way in which evidence is to be placed before the Tribunal;

(d) The number of witnesses or the amount of evidence that a party may call or introduce on a particular issue.

(4) By way of illustration, under sub-rule (3) a Presidential member may:-

(a) Direct where multiple expert opinions have been received by a party on a particular issue that only one expert give oral evidence and that the opinion of the other experts be received by way of written report as untested evidence;

(b) Give directions as to the order in which the witnesses give evidence, regardless of the party by whom they are called;

(c) Enquire into and determine what issues are in dispute;

(d) Direct that witnesses give evidence on different topics and different times during the hearing

(e) Direct that submissions be heard on different topics at different times during the hearing or otherwise depart from the usual order in which submissions are made;

(f) Limit the time spent on the whole or any part of evidence or submissions;

(g) Direct that oral evidence be received in such manner as the Tribunal thinks fit including the evidence of a witness by teleconference or videoconference;

(h) Determine whether submissions are made orally or in writing.

164. Non-expert evidence

(1) The Tribunal will determine the way in which the evidence of non-expert witnesses is given.

(2) In general, non-expert evidence will be given by affidavit and either filed and served in a form which has been sworn or affirmed or the oath or affirmation will be taken at trial upon the filing of a solicitor's affidavit, with the unsworn affidavit, where the solicitor attests to:

(a) The reasons why it was not possible for the witness affidavit to be sworn or affirmed by the deponent;

(b) The witness affidavit having been prepared by the solicitor on the instructions of the deponent;

(c) The deponent having advised the solicitor that they have read the unsworn and unaffirmed affidavit and agrees with its content; and,

(d) The deponent having provided an assurance to the solicitor that he/she will affirm its contents at trial.

165. Reasons for decision

The content of reasons for a decision in a FTS proceeding will depend upon the case under consideration and the matters in issue.

PART 22 - South Australian Skills Act

166. Suspension under s 64

(1) Where an employer suspends an apprentice or trainee from employment under s 64 of the *South Australian Skills Act 2008*, the employer must notify the Tribunal as soon as reasonably practicable that the matter has been referred to the South Australian Skills Commission (the Commission) for mediation, by filing the approved form at the registry.

(2) If a matter is unable to be resolved by mediation at the Commission, the employer must refer the matter to the Tribunal under this rule within 3 business days of the conclusion of mediation by filing the approved form at the registry stating:

(a) the name, date of birth and the training contract identity number of the apprentice/trainee suspended and his/her contact details including mobile telephone number and email address where available;

(b) the employer's legal name as stated on the training contract, trading name and the name and details of a contact person including telephone numbers and email addresses;

(c) a summary of the nature of the wilful and serious misconduct alleged; and

(d) the date and time of the suspension.

(3) Unless otherwise directed by the President, a registrar will provide the apprentice or trainee and the Commission with a copy of the form filed under this rule.

(4) Where an employer fails to attend the conference or any subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the employer had reasonable notice and a reasonable opportunity to be heard, revoke the suspension and order that the employer pay any remuneration or compensation to which the apprentice/trainee would, but for the suspension, have been entitled.

167. Disputes and Grievances

(1) An application under s 65 of the *South Australian Skills Act 2008* is to be made in an approved form.

(2) The parties to a proceeding under this rule must attend a compulsory conciliation conference under s 43 of the SAET Act.

(3) If an applicant who files an application under this rule fails to attend a conference or subsequent hearing in person or by a representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.

(4) Where an applicant files an application under this rule, and in response to any clarification sought by the Registrar or Tribunal member regarding their intention to proceed, does not confirm such an intention within 10 days, the Registrar may deem the matter to be discontinued without further notice.

PART 23 - Work Health and Safety Act

168. Form of WHS Entry Permit

A registrar will determine the form to be used for a WHS Act entry permit as defined by s 4 of the *Work Health and Safety Act 2012*.

169. Register of WHS Act Entry Permit Holders

(1) For the purposes of s 151 of the *Work Health and Safety Act 2012*, a registrar will publish a register of WHS Act entry permit holders on the Tribunal website.

(2) The register will contain the name of the permit holder and the union that a WHS entry permit holder represents, commencement and expiry dates (including suspension dates, if any), any conditions on the permit, and the date the register was last updated.

170. Application to Revoke a WHS Act Entry Permit and Disputes about Right of Entry

(1) Applications under s 138 of the WHS Act to revoke a WHS Act entry permit and proceedings under s 142 to deal with a dispute about a right of entry (including disputes under s 128 about whether a request about entry is reasonable), shall be commenced in the approved form.

(2) As soon as practicable after filing the application in the Tribunal, the applicant shall provide a copy of the application to the other parties nominated on the application form (or their representatives).

(3) The President will assign matters under sub-rule (1) to a Tribunal member.

(4) A Practice Direction may be issued to outline the steps to be taken and procedures to be adopted in a dispute about a right of entry under the *Work Health and Safety Act 2012*.

171. Surrender of WHS Act Entry Permits

(1) The person to whom a WHS Act entry permit is issued must return the permit to a registrar within 14 days of any of the following events taking place:

(a) the permit is revoked or suspended; or

(b) the permit expires; or

(c) a condition is imposed on the permit.

(2) A registrar may issue a replacement permit, including a permit which has had a condition imposed on it.

PART 24 - Industrial Referral Agreements

172. Application of Part

(1) This Part applies to referral agreements entered into after its commencement.

(2) Referral agreements entered into prior to the commencement of this Part will be dealt with by the Tribunal as if the *Industrial Proceeding Rules 2010* were still in operation with such modifications as may be necessary.

173. Form and filing of a Referral Agreement

Parties may file a copy of a referral agreement with the Tribunal by forwarding a copy of that agreement to the Registrar with a written request that the document be received as a referral agreement between the parties for the period of its duration.

174. Seeking the assistance of the Tribunal

(1) A request for the assistance of the Tribunal must be in an approved form and be accompanied by a copy of the referral agreement unless one has already been filed under this Part.

(2) In the event that a request for assistance is not signed by each party to the relevant referral agreement, the party making the request must serve a copy of it on each party to the referral agreement with an interest in the subject matter of the request for assistance.

175. Conduct of the dispute resolution

(1) Subject to any terms to the contrary in the referral agreement:

(a) conciliation and mediation will be conducted in private;

(b) arbitration may be conducted in public or in private;

(c) the dispute resolution proceedings will not be published in the Tribunal case list;

(d) any determination will not be published on the Tribunal website or distributed to subscribers;

(e) the parties are entitled to be represented in conciliation, mediation or arbitration;

(f) the information or documents given during the course of the dispute resolution must not be used or disclosed other than for the purpose of conducting dispute resolution;

(g) evidence of anything said or done during the dispute resolution is not admissible in related proceedings unless the parties agree; and

(h) the Tribunal will exercise such powers as may be expedient to resolve the dispute, including (with such modifications as may be necessary or determined by the Tribunal) the powers of the Tribunal during the conduct of conciliation conferences, mediation and arbitration and to make directions.

(2) If the Tribunal resolves some or all of the issues between the parties, a memorandum of the terms of settlement will be drafted by the parties which may be filed in the registry or may be confidential between the parties.

176. Notices to parties

(1) If the Tribunal member with conduct of a request for assistance has formed a preliminary view that no action should be taken on the request or that action should be suspended or discontinued, the Tribunal member will before making any determination to that effect:

(a) advise the parties in writing of their preliminary view;

(b) provide the parties with a reasonable opportunity to be heard by oral or written submissions on the issue;

(2) The Tribunal will provide the parties with a written determination setting out the reasons for a determination made on the request for assistance.

PART 25 - Applications for internal review - s 66 SAET Act

177. Section 66 SAET Act - Internal review of a decision of the Tribunal

An initiating application for internal review under s 66 of the SAET Act must be filed in the approved form and must include details of the Tribunal's decision, or the relevant part of the Tribunal's decision, of which review is sought.

PART 26 - Appeals

178. Application of Part

This Part applies to an appeal to the Full Bench of the Court under s 67 of the SAET Act against a decision of the Tribunal.

179. Procedure for appeals

(1) A person seeking to appeal must file and serve a Notice of Appeal in the approved form within 28 days of the making of the orders appealed against unless a relevant Act or a rule in the Rules concerning a relevant Act provides otherwise.

(a) Where an appellant is legally represented a Notice of Appeal must be certified as having been settled by counsel; otherwise

(b) A Notice of Appeal must be certified by the appellant.

(2) Any cross appeal or notice of alternate contentions must be filed and served by a respondent to an appeal within 28 days of service of the appeal.

(3) Not less than 35 days before the hearing the appellant shall file with the Tribunal copies of one Appeal Book for each Presidential member, and serve a copy of the Appeal Book on each respondent.

(4) Not less than 28 days before the hearing of the appeal an appellant shall file with the Tribunal and serve on all other parties a summary of the appellant's argument.

(5) Not less than 21 days before the hearing any other party who supports the position of the appellant shall file with the Tribunal and serve on all other parties a summary of that party's argument.

(6) Not less than 14 days before the hearing each respondent to the appeal shall file with the Tribunal and serve on all other parties a summary of its argument.

(7) Not less than seven days before the hearing any other party who supports the position of the respondent shall file with the Tribunal and serve on all other parties a summary of the party's argument.

(8) Not less than 21 days before an Appeal Book is filed the appellant is to file with the Tribunal and serve on all other parties a proposed index to the Appeal Book.

(9) Not less than 3 working days before the hearing, each respondent shall file copies of any additional transcript or exhibits (if any) upon which it relies, and shall serve a copy on the appellant and any other respondent(s).

(10) Any Notice of Appeal, cross appeal, notice of alternate contentions, Appeal Book, Statement of Issues and Contentions, written submission or summary of argument is to be served on any other party to the appeal within 2 business days of being filed unless a relevant Act or a rule in the Rules provides otherwise.

180. Service and content of Appeal Books

(1) An Appeal Book shall contain:

(a) the Notice of Appeal;

(b) the decision appealed from; and

(c) a copy of the relevant portions of the transcript of evidence and relevant exhibits.

(2) Appeal Books must comply with the following:

(a) the books must have a title page;

(b) the books must be indexed and paginated;

(c) documents in Appeal Books are to be copied using both sides of good quality A4 sized bond paper and their contents must be clear and legible; and

(d) Appeal Books are to be bound so that when opened they lie flat, e.g., with spiral binding. Staples are not to be used in or as binding.

(3) A Practice Direction may be issued from time to time in relation to requirements for the lodgement of an Appeal Book.

(4) The index to an Appeal Book is to:

(a) be located immediately after the title page;

(b) contain the following columns; an item number; a short description of each document; the document's date; and a page number;

(c) state the exhibit number (and the letters "MFI" where appropriate) of the document, including exhibits to affidavits; and

(d) number documents consecutively in the "Item Number" column.

(5) With a view to reducing the size of an Appeal Book, parties should as far as is practicable:

(a) exclude all documents and parts of documents that are not relevant to the issues on appeal;

(b) avoid duplication of documents; and

(c) include, when necessary, a concise summary of excluded parts of the evidence at first instance for the purpose of clarity.

(6) In all other respects, a party preparing an Appeal Book should endeavour to prepare and collate them in accordance with the approach required for the preparation of a Case Book under the Uniform Civil Rules.

181. Form and content of summary of argument

(1) A summary of argument is to be as brief as possible and, without the prior permission of the Tribunal, is not to exceed ten A4 pages.

(2) A summary of argument is to:

(a) contain a summary of facts of the decision under appeal;

(b) identify and summarise the errors complained of by reference to the grounds of appeal;

(c) provide the Tribunal with an outline of the steps in the argument to be presented on each issue;

(d) contain a succinct statement of each contention to be advanced by the party followed by references to authorities, (giving paragraph or page numbers), legislation (giving section numbers), relevant passages of the evidence and exhibits and/or the reasons for the judgment under appeal;

(e) identify any ground of appeal that is not pursued.

(3) Except when necessary to identify an error made at first instance, a summary of argument should not set out passages from the reasons for decision of a judgment under appeal, or the evidence, or the authorities relied upon, but instead should be a guide to these materials.

(4) The summary of argument should include any case citations or other authority to be relied upon. Any case citation must include the particular pages or paragraphs to which reference is intended to be made.

182. Statements of Issues and Contentions

(1) A Presidential member may, at an appeal, pre-hearing conference or at any other time, order a party to provide a Statement of Issues and Contentions in relation to an appeal.

(2) A Statement of Issues and Contentions is not to exceed five A4 pages without the prior permission of the Tribunal.

(3) A Statement of Issues and Contentions is to set out in successively numbered paragraphs:

(a) a brief and clear articulation of the essential issues raised on the appeal; and

(b) a succinct statement of the party's contention advanced in relation to each of the issues identified.

(4) Issues set out in the Statement of Issues and Contentions are to be described in neutral terms without presenting a party's position on those issues, and must, as far as practicable, particularise what issues are understood to be contested and what, if any, issues are agreed.

183. Written Submissions

(1) A Presidential member may, at an appeal pre-hearing conference or any other time, order a party to provide written submissions in lieu of oral submissions in relation to an appeal.

(2) Written submissions are not to exceed 20 A4 pages without the prior permission of the Tribunal.

(3) Written submissions must:

(a) in respect of each ground of appeal or issue: set out succinctly each proposition advanced by the party together with supporting references to the reasons for judgment, evidence, legislation or authorities;

(b) in respect of each statement of law challenged: identify the statement of law challenged, why it is erroneous, provide a correct statement of law and cite any authorities relied on in support; and

(c) to the extent that a party challenges the reasoning of a Presidential member: identify the reasoning, why it is erroneous and state what the correct reasoning is.

(4) Written submissions should not, other than in exceptional circumstances, set out passages from the reasons for judgment, evidence, legislation or authorities but should merely identify them.

184. Compliance with Practice Directions

(1) The Tribunal may decline to hear an appeal at the time listed if there is non-compliance with a relevant Practice Direction.

(2) The Tribunal may award the costs of any adjournment due to a failure of a party to comply with a Practice Direction against the defaulting party.

PART 27 - Rules relating to the use of interpreters in the South Australian Employment Tribunal

A. Interpreters generally

185. Main purposes of this part

The main purposes of this Part are:

(a) To ensure that the Tribunal has control over the use of interpreters for the interpretation or translation of other languages into English during conferences, pre-hearing conferences and hearings;

(b) To recognise the role of an interpreter in the administration of justice by declaring the duties of an interpreter in relation to the Tribunal and the parties to any proceeding which requires interpretation or translation.

186. Interpretation

In this Part:

accurately, in relation to interpreting or translating, means optimally and completely transferring the meaning of another language into English and of English into the other language, preserving the content and intent of the other language or English (as the case may be) without omission or distortion and including details that may be considered inappropriate or offensive;

certified interpreter, in relation to a language other than English, means an interpreter who is accredited, registered or recognised by a recognised agency or the Tribunal as an interpreter for a language other than English;

code of conduct for interpreters means the code of conduct for interpreters set out in this Part and is referred to as the Code in this Part;

interpret means the process by which spoken or signed language is conveyed from one language (the source language) into another (the target language) orally.

interpreter means a person who interprets, translates, or sight translates;

other language means a spoken or signed language other than English.

recognised agency means:

(a) the National Accreditation Authority for Translators and Interpreters (NAATI); or

(b) any other organisation approved by the President of the Tribunal to be a recognised agency for the purposes of this Part;

sight translate means the process by which an interpreter or translator presents a spoken interpretation of a written text;

translate means the process by which written language is conveyed from one language (the source language) to another (the target language) in written form.

187. Overarching role of Tribunal members

The rules that follow are subject to any direction made by a Tribunal member in relation to the conduct of hearings.

188. Proceedings to be conducted in English

Subject to this Part, proceedings in the Tribunal are to be conducted in English.

189. When an interpreter may be engaged

(1) If the Tribunal is satisfied that a witness cannot understand and speak the English language sufficiently to enable the witness to understand and make an adequate reply to questions that may be put to the witness, then the witness may give:

(a) oral evidence in another language that is interpreted into English by an interpreter who meets the standards and requirements set out in this Part; or

(b) evidence by affidavit or statement approved by the Tribunal in English that has been sight translated to the witness by an interpreter who meets the standards and requirements set out in this Part.

(2) The party calling a witness who requires an interpreter is responsible for informing the Tribunal, sufficiently in advance of any conference or hearing concerned:

(a) that the use of an interpreter is required;

(b) of the language and dialect to be interpreted; and

(c) of any other relevant matter that would enable the Tribunal to arrange for an appropriately qualified interpreter to be present.

(3) If the Tribunal is satisfied that a party cannot understand and speak the English language sufficiently to enable that party to understand and participate in the proceeding, the Tribunal may permit the party to use an interpreter who meets the standards and requirements set out in this Part so as to communicate with the Tribunal (but for no other purpose).

190. Who may act as an interpreter

(1) A person must not act as an interpreter in a proceeding or a proposed proceeding unless the person:

(a) is currently a certified interpreter of the language concerned or otherwise satisfies the Tribunal that the person is qualified to act as an interpreter; and

(b) has read and agreed to comply with the Code; and

(c) where required by the Tribunal, takes an oath or makes an affirmation to interpret accurately to the best of the person's ability.

(2) A person must not act as an interpreter if the person:

(a) is or may become a party to, or a witness in, the proceedings or proposed proceedings (other than as the interpreter); or

(b) is related to, or has a close personal relationship with, a party or a member of the party's family, or with a witness or potential witness; or

(c) has or may have a financial or other interest of any other kind in the outcome of the proceedings or proposed proceedings (other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of the person's engagement or appointment); or

(d) is or may be unable to fulfil the person's duty of accuracy or impartiality under the Code for any reason including, without limitation, personal or religious beliefs, cultural or other circumstances.

(3) A person acting as an interpreter must, if they become aware of a matter referred to in sub-rule (2) during a hearing:

(a) immediately disclose the issue to the Tribunal; and

(b) cease acting as an interpreter in the proceeding unless the Tribunal advises otherwise.

(4) Where it is in the interests of justice to do so, the Tribunal may allow a person to act or continue to act as an interpreter despite not complying with all of the requirements of sub-rules (1) to (3) if:

(a) the Tribunal is satisfied that, because of the person's specialised knowledge based on their training, study or experience, the person is able to interpret and, if necessary sight translate, accurately to a level the Tribunal considers satisfactory both to and from another language and English; and

(b) the person takes an oath or makes an affirmation to interpret accurately to the best of their ability; and

(c) the Tribunal is satisfied that the person understands and accepts that, in acting as an interpreter, they:

(i) are not the agent, assistant or advocate of the witness or the party for which the person is to act as an interpreter; and

(ii) owe a paramount duty to the Tribunal to be impartial and accurate to the best of their ability; and

(d) for the purposes of any trial, the Tribunal directs that the evidence and interpretation be sound recorded for spoken languages and video recorded for sign languages; and

(e) the person is over the age of eighteen years.

191. Function of interpreters

Unless the Tribunal otherwise orders an interpreter may not assist a party or a party's legal representatives in their conduct of a proceeding or proposed proceeding (including a hearing) except by:

(a) translating the questions and other spoken or signed communications in connection with the proceedings or proposed proceedings from English into the other language and from the other language into English; or

(b) sight translating the documents in connection with the proceedings or proposed proceedings from English into the other language and from the other language into English.

192. Interpreted evidence

(1) Unless the Tribunal orders otherwise, a sight translated affidavit or statement of a witness must be accompanied by an affidavit from an interpreter that deposes to the following:

(a) before sight translating the affidavit or statement to the witness, the interpreter:

(i) read the Code and agreed to be bound by it; and

(ii) had been given an adequate opportunity to prepare to sight translate the affidavit or statement.

(b) The interpreter sight translated the entire affidavit or statement to the witness.

(c) The witness, through the interpreter, informed the person who prepared the affidavit or statement that:

(i) The witness understood the interpreter; and

(ii) The witness agreed with the contents of the affidavit or statement.

(d) The witness swore or affirmed the affidavit or signed the statement in the presence of the interpreter.

(2) Unless the Tribunal otherwise orders, the interpreter referred to in sub-rule (1) may, but is not required to, be the interpreter who interprets the evidence of that witness in any hearing of the proceeding in question.

(3) The Tribunal may at any time, either of its own motion or upon the application of a party, request that an interpreter correct, clarify, qualify or explain their interpretation of the evidence or sight translation of a document.

193. Tribunal may give directions concerning interpreters

Without limiting the Tribunal's powers to control its own procedures, the Tribunal may at any time give directions concerning any or all of the following matters having regard to the nature of the proceedings (including the type of allegations made and the characteristics of the parties and witnesses):

(a) any particular attributes required or not required for an interpreter including, without limitation, gender, age or ethnic, cultural or social background so as to accommodate any cultural or other reasonable concerns of a party or the witness;

(b) the number of interpreters required in any proceedings and whether relay interpreting should be used;

(c) establishing the expertise of an interpreter;

(d) the steps to be taken before an order is made concerning an interpreter;

(e) what information concerning the proceedings (including, without limitation, pleadings, affidavits, lists of witnesses and other documents) may be provided to a person in advance of any hearing to assist that person to prepare to act as an interpreter at that hearing;

(f) when, in what circumstances and under what (if any) conditions the information referred to in (e) may be provided;

(g) whether an interpreter is to interpret the witness's evidence consecutively, simultaneously or in some other way;

(h) other resources such as dictionaries or other reference works that an interpreter may require to consult in the course of acting as an interpreter;

(i) the length of time for which an interpreter should interpret during a hearing without a break;

(j) security for an interpreter including, where necessary, arrangements to preserve the anonymity of the interpreter;

(k) practical matters concerning an interpreter such as seating for and the location of the interpreter;

(l) the disqualification, removal or withdrawal of an interpreter, including on the application of the interpreter or any party to the proceedings or by the Tribunal of its own motion.

194. Payment of interpreters

From time to time a Practice Direction may be issued by the Tribunal in relation to the amounts payable to interpreters for providing interpretation services.

B. Code of conduct for interpreters

195. Application of the code of conduct for interpreters

The Code applies to any person who, whether or not for fee or any other reward, is engaged, appointed, volunteers or otherwise becomes involved in proceedings or proposed proceedings to act as an interpreter by interpreting or sight translating from any spoken or signed language (the other language) into English and from English into the other language for any reason.

196. Compliance with the code of conduct for interpreters

(1) An interpreter must comply with the Code.

(2) Unless the otherwise ordered, as soon as practicable, after an interpreter is engaged or appointed in relation to a proceeding or proposed proceeding, a copy of the Code is to be provided to the interpreter by the Tribunal.

(3) Unless the Court otherwise orders, a witness may not give evidence using an interpreter unless the Tribunal is satisfied that the interpreter has read the Code and has agreed to be bound by it.

(4) Sub-rules (1)-(3) have effect subject to rule 188.

197. General duty to the Tribunal

(1) An interpreter owes a paramount duty to the Tribunal to be impartial and accurate to the best of their ability.

(2) The duty to the Tribunal overrides any duty the person may have to a party.

(3) An interpreter must interpret, translate or sight translate impartially.

(4) An interpreter is not to act in any way as an advocate, agent or assistant for a party or witness.

(5) Unless the Tribunal orders otherwise, an interpreter must:

(a) interpret questions and all other spoken communications in the conference or hearing of the proceedings from English into the other language and from the other language into English; and

(b) subject to sub-rule (4), sight translate, whether before or during the course of the witness' statement in the course of a conference or evidence at a hearing, documents shown to the witness.

(6) An interpreter may refuse to sight translate if:

(a) the interpreter considers that they are not competent to do so; or

(b) the task is too onerous or difficult by reason of the length or complexity of the task.

198. Duty to comply with directions

An interpreter must comply with any directions made by the Tribunal.

199. Duty of accuracy

(1) An interpreter must at all times during a proceeding use their judgement to interpret, translate or sight translate as accurately as possible.

(2) An interpreter must optimally and completely transfer the meaning of the language being interpreted, so as to preserve the content and intent of the other language

or English (as the case may be) without omission or distortion, including by accurately interpreting matters that may be considered inappropriate or offensive.

(3) If an interpreter considers that their interpretation or sight translation is or could be in any way inaccurate or incomplete, or may require qualification or explanation (including, without limitation, where the other language is ambiguous or otherwise unclear for any reason), then the interpreter must:

(a) immediately inform the party who engaged them in relation to any pre-trial matter and advise the Tribunal and provide the necessary correction, qualification or explanation to that party or the Tribunal (as the case may be); and

(b) if the evidence is being given in a Court session, immediately inform the Tribunal and provide the necessary correction, qualification or explanation to the Tribunal or if in a conference or directions hearing immediately inform the presiding Tribunal member and provide the necessary correction, qualification or explanation.

200. Duty of impartiality

(1) An Interpreter must at all times act impartially so as to be without bias in favour of or against any person, including but not limited to:

(a) the witness whose evidence the Interpreter is engaged to interpret, translate or sight translate;

(b) in circumstances of pre-action or pre-trial engagement by a party, the party who has engaged or is remunerating the Interpreter; or

(c) any other party or person involved in the proceedings or proposed proceedings.

(2) An interpreter must not provide any other assistance, service or advice (including by way of elaboration) to:

(a) the party, legal representative or other person who has engaged them; or

(b) any witness or potential witness, in relation to the proceeding or proposed proceeding.

(3) In any proceeding when the Tribunal sits as the Court an interpreter must not provide any service or assistance to a party or witness outside of the hearing without the approval of the Presidential member conducting the hearing.

201. Duty of competence

An interpreter must only undertake interpreting work that they are competent to perform in the languages for which the interpreter is qualified by reason of the Interpreter's training, qualifications or experience.

202. Confidentiality

Subject to compulsion of law, an interpreter must keep confidential any information that they acquire in the course of an engagement or appointment as an interpreter unless:

(a) the information is in, or comes into, the public domain other than an interpreter breaching their duty of confidentiality; or

(b) the beneficiary of any legal professional privilege has waived that privilege.

PART 28 - Contempt of the Tribunal

203. Contempt committed in the face of the Tribunal

(1) If a contempt is committed in the face of the Tribunal and it is necessary to deal urgently with it, the Tribunal sitting as the Court may:

(a) if the person alleged to have committed the contempt (the accused) is within the precincts of the Tribunal, order that the accused be taken into custody; or

(b) issue a warrant to have the accused arrested and brought before the Tribunal to be dealt with on a charge of contempt.

(2) The Tribunal must formulate a written charge containing reasonable details of the alleged contempt and have the charge served on the accused when, or as soon as practicable after, the accused is taken into custody.

204. Tribunal initiated proceedings for contempt – other cases

(1) If the Tribunal decides on its own initiative to deal with a contempt of the Tribunal, a registrar may be required to formulate a written charge containing reasonable details of the alleged contempt.

(2) A registrar will then issue a summons requiring the person alleged to have committed the contempt (the accused) to appear before the Tribunal at a nominated time and place to answer the charge.

(3) The Tribunal may issue a warrant to have the accused arrested and brought before it to answer the charge if:

(a) there is reason to believe that the accused will not comply with a summons; or

(b) a summons has been issued and served but the accused has failed to appear in compliance with it.

205. Contempt proceedings by a party to proceedings

(1) A party to a proceeding who claims to have been prejudiced by a contempt of the Tribunal committed by another party or a witness or another person in relation to the proceeding (the accused) may apply to the Tribunal to have the accused charged with contempt.

(2) An application under sub-rule (1):

(a) must be made as an interlocutory application supported by affidavit; and

(b) must include details of the alleged contempt.

(3) An application under sub-rule (1) may be made without notice to the accused or other parties but the Tribunal may direct the applicant to give notice of the application to the accused or the parties (or both).

(4) If a Presidential member of the Tribunal is satisfied on an application under sub-rule (1) that there are reasonable grounds to suspect the accused of the alleged contempt, the Tribunal may require a registrar to formulate a written charge containing reasonable details of the alleged contempt.

(5) The Registrar will then issue a summons requiring the accused to appear before the Tribunal at a nominated time and place to answer the charge.

(6) The Tribunal may issue a warrant to have the accused arrested and brought before it to answer the charge if:

(a) there is reason to believe that the accused will not comply with a summons; or

(b) a summons has been issued and served but the accused has failed to appear in compliance with it.

206. Hearing a charge of contempt

(1) A charge of contempt is to be dealt with by the Tribunal sitting as the Court constituted by a single Presidential member except if the contempt is a contempt of the Full Tribunal in which case the Full Tribunal may itself deal with the charge.

(2) The Registrar will have the carriage of the prosecution of a charge of contempt, and may retain solicitors and counsel for that purpose.

(3) In relation to proceedings for contempt which were initiated by an application under rule 206(1), the Tribunal may direct the applicant to indemnify the Registrar in respect of the costs incurred by the Registrar or ordered to be paid by the Registrar and this right of cost recovery is additional to that contained in rule 208(3).

(4) The Tribunal will deal with a charge of contempt as follows:

(a) the Tribunal will hear relevant evidence for and against the charge from the prosecutor and the accused;

(b) the Tribunal may, on its own initiative, call witnesses who may be able to give relevant evidence;

(c) at the conclusion of the evidence, the Tribunal will allow the prosecutor and the accused a reasonable opportunity to address it on the question whether the charge has been established;

(d) if, after hearing the evidence and representations from the prosecutor and the accused, the Tribunal is satisfied beyond reasonable doubt that the charge has been established, the Tribunal will find the accused guilty of the contempt;

(e) the Tribunal will, if it finds the accused guilty of the contempt, allow the prosecutor and the accused a reasonable opportunity to make submissions on penalty;

(f) the Tribunal will then determine and impose a penalty.

(5) A witness called by the Tribunal may be cross-examined by the prosecutor and the accused.

207. Punishment of contempt

(1) The Tribunal may punish a contempt by a fine or imprisonment (or both).

(2) If the Tribunal imposes a fine, it may:

(a) fix the time for payment of the fine; and

(b) fix a term of imprisonment in default of payment of the fine.

(3) The Tribunal may order a person who has been found guilty of a contempt to pay the costs of the proceedings for contempt.

(4) The Tribunal may release a person who has been found guilty of a contempt on the person entering into an undertaking to the Tribunal to observe conditions determined by the Tribunal.

(5) The Tribunal may, on its own initiative or on application by an interested person, cancel or reduce a penalty imposed for a contempt.

(6) An order for the imposition of a penalty for a contempt, or for the cancellation of a penalty imposed for a contempt:

(a) may be made on conditions the Tribunal considers appropriate; and

(b) may be suspended on conditions the Tribunal considers appropriate.

(7) The Tribunal may, on its own initiative or on application by the Registrar:

(a) cancel the release of a person who has been released under sub-rule (4) for breach of a condition of the undertaking; and

(b) issue a warrant to have the person arrested and brought before the Tribunal to be dealt with for the original contempt.

(8) The Registrar, if so directed by the Tribunal, must make an application under sub-rule (7).

PART 29 - Miscellaneous

208. Notice of hearing

Before the Tribunal hears any application, a registrar must give a notice of the time and place of the hearing to the applicant and to any other person who has been served with a copy of the application.

209. Location of hearing

(1) If a party wishes the hearing of a proceeding, or any part or step in a proceeding, to take place other than at the Tribunal's principal location in Adelaide, the party must apply to the Tribunal member who is to hear the matter to have a hearing in some other place, nominate where the other place is, and give reasons why the matter should be heard there.

(2) The Tribunal member who is to hear a matter will decide where the matter is heard.

210. Provision of consent orders

(1) A matter which resolves by consent will be taken to have resolved on the date when in-principle settlement of the matter takes place.

(2) Parties are required to advise the Tribunal in writing within 7 days of in-principle settlement occurring.

(3) The Tribunal may cancel any conference, attendance or hearing scheduled for a matter after in-principle settlement of a proceeding has taken place.

(4) Parties are required to provide draft orders in the approved form to the Tribunal within 28 days of in-principle settlement taking place and the Tribunal may require parties to advise of the date on which in principle settlement occurred.

211. Procedure for identifying and dealing with summary proceedings

(1) Subject to the SAET Act, any relevant Act, the Rules and any Practice Direction, a Presidential member may direct that a particular proceeding, or a class of proceedings identified by a Practice Direction, be heard and determined as a summary proceeding.

(2) A summary proceeding may be heard by such Tribunal member as directed by a Presidential member.

(3) Parties must be prepared for a summary proceeding to be heard without delay.

(4) When making orders in relation to hearing a summary proceeding, and without limiting the ambit of the directions which may be made, the Tribunal may direct:

(a) that the proceeding be heard by reference to available documentary evidence only;

(b) that the evidence of any witness be reduced to writing;

(c) some or all witnesses not be required for cross-examination;

(d) that the parties agree the facts, or some of them;

(e) that the parties reduce their contentions, and the factual and legal findings they say should be made, to writing.

(f) that the time available to each party to present its case be limited to a specified time.

212. Disrupting Tribunal proceedings

(1) If a Tribunal member considers that a person has behaved in a manner contrary to s 91(1) of the SAET Act, that member must refer the matter to the President or to a Presidential member to whom the President has delegated the power to deal with the matter.

(2) The Presidential member to whom a matter is referred under this rule will consider the appropriate action to take in the circumstances, including whether or not to recommend that a charge be laid against the person.

(3) Without limiting the generality of what order or orders may be made under this rule, a Presidential member may, after giving an opportunity to all affected parties to be heard, stay or strike out proceedings, if considered appropriate, or may order the proceedings continue subject to any terms and conditions thought necessary.

213. Application to attend an examination by a health practitioner

(1) Subject to this rule, in any proceedings before the Tribunal in which the physical or mental condition of a person is a relevant issue and the person seeks a benefit or payment to which medical evidence may be relevant, another party may make application to the Tribunal under this rule seeking an order that the person submit to examination by a specified health practitioner at a specified time and place.

(2) A party making an application under this rule must organise the examination, provide the person sought to be examined with reasonable notice of the examination and be responsible for any fee or charge associated with the examination.

(3) A party making an application under this rule must, if requested by the person or their representative, pay to or on behalf of the person a reasonable sum to meet the travel or parking costs of a person attending the medical examination.

(4) Where a person opposes an application made under this rule, or attends the examination but does not do or answer all things reasonably requested by the health practitioner to facilitate the examination, the Tribunal may, upon application by another party, stay the proceedings or make such other order or direction as is appropriate.

214. Fees may be published

(1) The Registrar may from time to time by notice published in the SA Government Gazette, specify the amount of any fee payable for:

(a) filing any proceeding or document;

(b) being provided with transcript of any proceedings, whether electronically or in paper form;

(c) the use in any proceedings of an interpreter;

(d) undertaking a search of any record held by the Tribunal;

(e) copying any documents;

(f) summonsing any document, person or thing.

(2) In any particular case, a registrar may direct that the whole or any part of fees otherwise payable under this rule, will not be charged, or if charged and paid, be returned.

215. Paying money into the Tribunal

(1) All money paid into the Tribunal is to be paid into the SAET Fund established by the Registrar.

(2) Money is to be paid out of the Fund either:

(a) by order of a Presidential member; or

(b) upon the direction of the Registrar.

(3) The Fund and any income it produces are to be invested by the Registrar as a common fund pursuant to s 21 of the *Public Finance and Audit Act 1987.*

(4) As soon as practicable after the last days of June and December in each year, the Registrar is to fix the rate of interest payable in respect of funds in the Tribunal for the preceding half-year and to credit interest to the common fund or any special fund at those times.

(5) When money is paid out during any half-yearly period the rate of interest applicable to the previous half-year will apply unless the Registrar directs otherwise.

(6) Interest accrues from day to day up to the date when payment out is made.

216. Delegation by registrars

(1) With the permission of the President, the Registrar may delegate to another member of the staff of the Tribunal a function of a registrar under the Rules.

(2) The delegation:

(a) must be in writing; and

(b) may be conditional; and

(c) does not derogate from the ability of the Registrar to act in any matter; and

(d) is revocable at will by the Registrar.

Dated 31 January 2022

The Honourable Justice Steven Dolphin

President of the Tribunal

His Honour Judge Mark Calligeros

Deputy President of the Tribunal

RULES HISTORY

Title	Commenced	Revoked
South Australian Employment Tribunal Rules 2015	1 July 2015 SA Government Gazette: 18 June 2015 (No. 37, page 2918)	1 July 2017
South Australian Employment Tribunal Rules 2017	1 July 2017 SA Government Gazette: 27 July 2017 (No. 42, page 2652)	3 February 2022
South Australian Employment Tribunal Rules 2017	Amendment no1 SA Government Gazette: 6 February 2018 (No. 8, page 669)	Rule 11 revoked and substituted Rule 22(3) revoked and substituted Rule 55(7) amended
South Australian Employment Tribunal Rules 2022	3 February 2022 SA Government Gazette: 3 February 2022 (No. 7, page 230)	