

South Australian Employment Tribunal

Practice Directions **2023**



SOUTH
AUSTRALIAN
EMPLOYMENT
TRIBUNAL

Practice Directions 2023

The President of the South Australian Employment Tribunal makes the following Practice Directions under s 11(2)(e) of the *South Australian Employment Tribunal Act 2014* and r 10(1) of the *South Australian Employment Tribunal Rules 2022*.

In constantly improving the Tribunal's practices and procedures, these Practice Directions have been revised and updated to ensure that applications brought in the Tribunal are processed and resolved as quickly as possible while achieving just outcomes, and in order to keep costs to parties involved in proceedings to a minimum, insofar as is just and appropriate.

1 March 2023

Adelaide, Australia

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PART 1 - PRELIMINARY

1. Interpretation

- (1) In these Practice Directions:
 - (a) words used have the same meaning as words used in the SAET Act, SAET Regulations or SAET Rules or, where relevant, a relevant Act or regulations made under a relevant Act;
 - (b) the **SAET Act** means the *South Australian Employment Tribunal Act 2014*;
 - (c) the **SAET Regulations** means the *South Australian Employment Tribunal Regulations 2015*;
 - (d) the **SAET Rules** means the *South Australian Employment Tribunal Rules 2022*;
 - (e) the **RTW Act** means the *Return to Work Act 2014*;
 - (f) the **WHS Act** means the *Work Health and Safety Act 2012*;
 - (g) the **Tribunal** means the South Australian Employment Tribunal, including the South Australian Employment Court;
 - (h) the **Court** means the South Australian Employment Court.
- (2) These Practice Directions are to be read subject to the SAET Act, SAET Regulations and SAET Rules, and to any provision of a relevant Act or regulations under a relevant Act.
- (3) A reference in these Practice Directions to a “party” shall be taken, where the context permits, to include “parties”.

2. Repeal of Practice Directions

The following Practice Directions are repealed:

- (1) Practice Directions 2015 (Nos 1 – 27).
- (2) Practice Direction No 20 (10 December 2021).
- (3) Practice Direction No 28.
- (4) Practice Direction No 30.
- (5) Practice Direction No 31.
- (6) Practice Direction No 32.
- (7) Practice Direction – The witnessing of affidavits during the COVID-19 pandemic.
- (8) Practice Directions 2022.

3. Dispensation from these Practice Directions

The Tribunal may, on application or on its own initiative, dispense with compliance by any person with, or vary any requirement of, these Practice Directions, 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 it considers appropriate.

4. The Registry

The Registry of the Tribunal shall be situated at Level 6, Riverside Centre, North Terrace, Adelaide and shall be open to the public between 8:30am and 5:00pm on days other than weekends and public holidays.

5. The Seal

- (1) The Seal of the Tribunal approved by the President pursuant to r 9(2) of the SAET Rules is in the following forms:



- (2) In accordance with r 9(1), the Tribunal Seal will be affixed to:
- Initiating applications, including amended applications. The Seal is not affixed to attachments;
 - Summonses;
 - Assessment and Recommendations (s 43(13) of the SAET Act);
 - Orders; and
 - Certificates under s 85 of the SAET Act.
- (3) The Registrar, having control of the Seal, may seal other documents where there is good reason to do so, or it is mandated by another legislative instrument.

PART 2 - LODGEMENT OF DOCUMENTS

6. Application of this part

This Part applies to documents lodged with the Registry for filing either to initiate proceedings or to take a subsequent step in those proceedings. This Part does not apply to documents provided informally to the Tribunal for conciliation or other purposes, unless otherwise ordered by the Tribunal.

7. General requirements for lodging documents

General

- (1) The use of the term “document” refers to any piece of information, file attachment (including video and audio files), physical document or thing.
- (2) The Registrar has the discretion to receive or refuse to receive a document in accordance with rr 14 and 15 of the SAET Rules.
- (3) When you lodge a document, you should ensure that you comply with any relevant Act, Rule, Order or direction of the Tribunal.

Prescribed forms

- (4) Where a prescribed form is available on www.saet.sa.gov.au, it must be used.

Lodging Multiple Similar Documents

- (5) If you are lodging multiple of the same type of document (e.g., payslips), you should combine them into one file before lodging.

Acknowledgment of lodgements

- (6) SAET will provide an acknowledgment of lodgement when documents are lodged electronically.
- (7) Unless required by relevant legislation or Rules, documents lodged in hardcopy will not be acknowledged.

8. Method of lodgement

- (1) Subject to any determination by the Registrar pursuant to r 13(5) of the SAET Rules, the Tribunal’s preference for document lodgement is:
 - (a) Electronically – using a **specific online form** where an “Online” form is available on the SAET website:
 - (i) to commence a case
 - (ii) in relation to an existing case
 - (b) Electronically – using the **online document lodgement facility** for existing cases only on the SAET website to lodge:
 - (i) A completed SAET PDF or Microsoft Word form
 - (ii) Any document relevant to a case that is in an appropriate format
 - (c) Electronically – using **email** where the email size (including attached files) does not exceed 10MB
 - (d) Electronically – using a **secure file sharing platform** approved by the Tribunal
 - (e) Another method as agreed by the Registrar of the Tribunal

9. Electronic lodgement

Certain restrictions may determine the appropriate method of lodgement.

Restriction	Specific Online Form (uploaded supporting attachments)	Online Document Lodgement (uploaded attachments)	Email	Secure File Sharing Platform
Maximum size	100MB per attachment No limit overall		10MB (overall email)	As per platform restrictions
File formats (where able, files should be converted to permitted file type prior to lodgement)	Permitted Document: DOC, DOCX, XLS, XLSX, PPT, PPTX, PDF, CSV, TXT, RTF Image: BMP, GIF, JPG, JPEG, PNG, TIF, TIFF Media: MP4, AVI, MKV, MP3			
	Not permitted (for reference but not limited to): ZIP files, MSG, unauthorised devices (e.g., USB, external hard drive, CD, DVD) Note: SAET uploads individual attachments to its case management system.			

10. Email lodgement

If you are lodging a document using email:

- (1) it should be addressed to saet@sa.gov.au.
- (2) the subject line of the covering email must state, in this order:
 - (a) if the document relates to an existing proceeding – the case number given to the proceeding by the Tribunal; and
 - (b) the title of the approved Form or document.
- (3) the covering email must provide:
 - (a) the parties' names; and
 - (b) an email address to which the Tribunal can send the acknowledgement of lodgement.

11. Signatures

Where you are required to sign a document, you may:

- (1) apply, or direct someone to apply on your behalf, an electronic signature;
- (2) where provision is provided for on a SAET form, type your name, or direct someone to type your name on your behalf;
- (3) physically sign a hardcopy document; or
- (4) satisfy the requirement by any means agreed to by the Tribunal.
- (5) Where a document has been signed, the Tribunal is entitled to assume that the signee agrees with the content of the document.

12. Proof of service and consent

- (1) In accordance with relevant legislation or Orders or directions of the Tribunal, a party may be required to serve documents on other parties to a case.
- (2) SAET will only require proof of service to be presented to the Tribunal should the service later be contested during proceedings. SAET does not require to be “copied in” to every service.
- (3) SAET only requires the final and complete document or correspondence that proves parties’ consent to an order. SAET does not require to be copied into discussion or correspondence between parties deliberating what will be agreed to.

PART 3 - SECTION 28 STATEMENTS AND RELEVANT DOCUMENTS

13. Form and order of material to be provided

- (1) The material that the decision maker provides to the Tribunal under s 28(2) of the SAET Act must be presented in one or more electronic volumes with documents set out in headings and numbered within each heading in chronological order from the earliest to the latest date. Each electronic volume shall be bookmarked to facilitate navigation to each document included within each volume.
- (2) The material included must comprise only that which is relevant to the decision under review. Tribunal notices should not be included.
- (3) For proceedings under the RTW Act, to the extent possible and appropriate, material must be presented in the order of the following headings:
 - (a) Claim Documents;
 - (b) Tribunal Documents comprising at least the reviewable decision, the application for review, and if available the reconsideration;
 - (c) Medical Reports/Documents;
 - (d) Medical Certificates;
 - (e) Earlier decisions of the compensating authority/self-insured employer;
 - (f) Other documents or correspondence.

PART 4 - PRE-HEARING PROCEDURES

14. Adjournment of directions hearings or conferences

It is in the interests of all Tribunal users that proceedings are heard and resolved, either by agreement or by determination, as quickly as possible. Where a proceeding has been given a time and place for directions, a compulsory or pre-hearing conference, or any other preliminary hearing, the Tribunal will expect that the parties and their representatives will be ready to proceed at the appointed time. Any application to adjourn must be soundly based and made in accordance with this Practice Direction and, with respect to a compulsory conference, in accordance with r 47 of the SAET Rules. Applications for an adjournment (including applications by consent) made without sufficient and demonstrated reasons to justify an adjournment will not be granted.

- (1) An application for adjournment must be made as soon as a party decides to seek an adjournment and has sought the views of the other parties.
- (2) Any such application must:
 - (a) be lodged for filing with the Registry in an approved form and be served on other parties as soon as possible;
 - (b) provide the reasons the adjournment is sought and attach a copy of any supporting documents;
 - (c) include a statement by the applicant for the adjournment as to when the other parties were served with the application, and whether any response to the application has been received from the other parties, and if so, the nature of that response, including whether there was written consent (including by email) to the proposed application.
- (3) Evidence of the responses of other parties to the application for adjournment must not be attached to the application. The applicant for the adjournment must undertake to the Tribunal that any written responses referred to under sub-para (2)(c) above have been retained on their file and are available for production if required.
- (4) If the application for an adjournment is lodged with the Tribunal not less than three clear days before the date of the directions hearing or conference, the Tribunal member will endeavour to determine the application and notify the parties of the outcome within two days.
- (5) An application for adjournment made less than three clear working days before the date of the directions hearing or conference, whether with the consent of the other party or not, will be referred to the directions hearing or conference for determination, unless the Tribunal determines otherwise.
- (6) Unless parties are served with a copy of an Order by a member of the Tribunal granting the adjournment sought, the parties must assume that the directions hearing, or conference will proceed on the day and at the time fixed and must attend ready to proceed. Parties must not assume that any application to adjourn, even with consent, will be granted.
- (7) The Tribunal has a discretion to grant an adjournment other than in accordance with this Practice Direction, where procedural fairness in the instant case requires it.
- (8) In determining an application for an adjournment of RTW Act proceedings, the Tribunal may consider, on its own initiative or on the application of a party, whether it is appropriate to make a costs order in relation to a professional representative under s 107 of the RTW Act.

15. Surveillance material

- (1) It is not an appropriate use of the Tribunal's procedures, as provided by the SAET Rules, to usurp the obligations and powers conferred by RTW Act. Subsection 104(3) of the RTW Act requires each party to disclose to the member of the Tribunal presiding over a compulsory conciliation conference the existence and nature of all evidentiary material in the party's possession relevant to the matter. Subsection 104(4) provides discretion to that member to deny access to that material to other parties.
- (2) In the case of surveillance material and the like, at conciliation, if a party seeks an order from the Tribunal that it not be obliged to disclose that evidentiary material, the proper course is to make an application to the member presiding over the conciliation. In such circumstances it is not appropriate to make an *ex parte* application under r 57(7) of the SAET Rules.
- (3) Accordingly, in the event that an *ex parte* application under r 57(7) is made whilst a case is at conciliation, the Registrar is directed to allocate that application to the Tribunal member presiding over the conciliation.
- (4) Should a party be dissatisfied with the outcome of the application as determined by the Tribunal member presiding over the conciliation, a review of that decision can be made pursuant to s 66 of the SAET Act.

16. Offers made at or after conciliation

- (1) If a party wishes to make a formal record of an offer made to another party to resolve a dispute, that party may file and serve an "Offer to Settle" in the approved form.
- (2) The filed copy of the offer will be kept as a confidential document on the Tribunal file.
- (3) The offer may be viewed by the Presidential member presiding at the pre-hearing conference to consider the offer for the purposes of making an assessment. In that event, a note must be made on the file to that effect. The content of the offer is not to be disclosed to the Presidential member who hears and determines the case, nor admitted in proceedings before the Tribunal, except after a final determination is made, and then only for the purpose of considering an application for an Order under s 106(7) of the RTW Act.

17. Transition from compulsory conference to pre-hearing conference

- (1) If the compulsory conference does not result in an agreed settlement of the proceeding, the parties and their representatives must, before the conclusion of the compulsory conference, confer with the Commissioner to further clarify and narrow the issues in dispute, and assist the Commissioner to identify appropriate orders or notations to be made with a view to ensuring that:
 - (a) the parties are ready to proceed with the pre-hearing conference on the appointed day; and
 - (b) the Presidential member who presides at the pre-hearing conference is provided with sufficient information about the proceeding to be able to decide whether an assessment can be made as required by s 45 of the SAET Act or whether further steps should be taken to explore possible settlement of the proceeding.
- (2) Appropriate orders and notations made by a Commissioner in this context may include any one or more of the following:
 - (a) that a statement of issues be served by each party by a specified date;
 - (b) that a statement of proposed evidence of the applicant or any other potential witness be served on each other party by a specified date;
 - (c) that each party serve on the other party a summary of their respective cases;

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- (d) that each party serve on the other party a record of the witnesses and documentary evidence upon which each party proposes to rely at the hearing.
 - (e) that further expert reports (if any) upon which a party proposes to rely¹ be sought within the time allowed by r 67 of the SAET Rules and served on the other party by a certain date.²
 - (f) that a consolidated Book of Documents, including only that material now relevant in light of any narrowing of the issues (and including any of the further material to be produced under sub-paras (a) to (e) above), be served before the pre-hearing conference.
- (3) Any consolidated Book of Documents must be filed and served within five working days of the latest date for compliance with any Orders made by the Commissioner under para (2) above.
 - (4) The pre-hearing conference will be fixed by the Chambers of the Presidential member to whom the proceeding is referred at an appropriate time having regard to the time for compliance with any Orders made by the Commissioner and any notations made under para (2) above, and the time limit for filing and serving the consolidated Book of Documents.

18. Referral to Hearing and Determination

- (1) Subsection 43(13) of the SAET Act requires that if a settlement of a matter is not reached at a compulsory conciliation conference, the presiding Tribunal member must give to the parties an assessment of merits and recommendations to resolve the matter. Section 44 of the SAET Act requires that if no agreed settlement of the matter is achieved at conciliation, the member of the Tribunal presiding over the conciliation must refer the matter to hearing and determination.
- (2) However, at the conclusion of the conciliation process, parties often ask that further time be provided to allow for continuing settlement negotiations outside of the Tribunal, before the assessment of merits and recommendations document is provided and the matter referred to hearing and determination.
- (3) Whilst continuing settlement negotiations between the parties is to be encouraged, the provision of additional time for such should not hold up the timely delivery of the assessment of merits and recommendations document and the referral of the matter to hearing and determination.
- (4) Accordingly, the Tribunal's Commissioners are directed to provide the assessment of merits and recommendations document, and to refer the matter to hearing and determination, no later than 14 days after the conclusion of the conciliation process.

19. Pre-hearing conferences

- (1) Unless otherwise advised parties should expect that a pre-hearing conference will be listed for at least 15 minutes.
- (2) The practitioner with ultimate responsibility for the conduct of the case on behalf of each party (the file principal), or alternatively, a practitioner who has a comprehensive understanding of the case, will be expected to attend the pre-hearing conference.

¹ Subject to the limit under r 70 on the number of experts upon which a party may rely.

² Under r 67, any expert report upon which a party may wish to rely must be sought before the proceeding is first before a presidential member at a pre-hearing conference.

- (3) At the pre-hearing conference, the Presidential member will make an assessment of the case. For the purposes of making the assessment, the Presidential member may adjourn the pre-hearing conference to a later date to allow for steps to be taken to explore, or further explore, settlement options, and for this purpose may list the proceedings for a judicial settlement conference or refer the case to Mediation.
- (4) In making an assessment of the proceeding in accordance with s 45 of the SAET Act, in addition to any material arising from a further exploration of the possibility of settlement, the Presidential member may have regard to the memorandum prepared by the Commissioner at the conclusion of the compulsory conference and to any offer filed in accordance with Practice Direction 15.

20. Attendances by two representatives

- (1) After a case has been referred to hearing and determination pursuant to s 44 of the SAET Act, a practice amongst representatives has developed whereby at the pre-hearing conference stage a party is represented by two representatives, often counsel and an instructor. In such matters, the contribution of the second representative, if any, does not involve legal skill.³ Essentially, that second representative functions merely as an observer. The circumstances of many of these cases do not necessitate the need for two representatives; one representative would suffice.
- (2) In order to keep the costs to the parties involved in proceedings before the Tribunal to a minimum, insofar as is just and appropriate, representatives are directed to consider the utility of the second representative at hearings that are essentially procedural. Procedural hearings do not include:
 - (a) a settlement conference presided over by a Presidential member.
 - (b) a compliance conference, with the trial of the matter due to begin in the near future.

21. Statement of Issues and Contentions

- (1) As part of pre-trial procedures, a Presidential member may order the filing and serving of a Statement of Issues and Contentions (Statement). In the circumstances of the particular case, it may be ordered that a separate heading of “Facts” be included in the Statement.
- (2) In the absence of a specific direction to the contrary, the Statement must comply with the following requirements:
 - (a) In the case of all Statements,
 - (i) the issues identified by the party, whether by way of the existing proceedings or any ordered or proposed expansion of issues, shall be set out in a series of separately numbered paragraphs;
 - (ii) in relation to all such issues, the contentions of the party shall appear thereafter in a series of separately numbered paragraphs;
 - (iii) as part of the contentions, the party shall set out the orders sought, and any other relief contended for;
 - (b) where the heading “Facts” is ordered, the Statement shall include in numbered paragraphs the material factual findings for which the party contends;
 - (c) if the Statement is responsive to a Statement filed by another party, then the responsive Statement shall:
 - (i) respond directly to each assertion of issue, contention or fact;
 - (ii) to the extent the assertions are not agreed, shall identify the extent of any disagreement and any contrary assertion.

³ *Uniform Civil Rules 2020 South Australia*, Schedule 6, Part 2, Higher Courts costs scale.

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- (3) The Tribunal and the parties are entitled to assume that the Statement filed on behalf of a party represents the case that party intends to present at trial.

22. Witnessing of affidavits

- (1) If it is not possible to take an affidavit in person, a solicitor should exhibit the deponent's unsworn affidavit to the solicitor's own affidavit, with an undertaking to file the sworn original once it is possible to have it sworn.
- (2) The solicitor's affidavit should provide:
- (a) the reasons why it was not possible for the exhibited affidavit to be sworn or affirmed by the deponent;
 - (b) that the unsworn document has been prepared on the instructions of the deponent;
 - (c) that the deponent has read the document and agrees with its content; and,
 - (d) that upon it becoming possible to do so, the deponent will swear/affirm the document.
- (3) If the solicitor's affidavit is filed unsworn, the solicitor is taken to have given an undertaking that the contents are true and correct.

23. Electronic Trial Book

- (1) Where directed to do so by the presiding Presidential member, an electronic Trial Book will be lodged.
- (2) An electronic Trial Book shall be lodged in accordance with Part 2 of these Practice Directions.
- (3) Information about how to create an electronic trial book to assist with compliance of the below requirements can be found on the [SAET website](#).

Format

- (1) The electronic Trial Book must be in fully text searchable PDF format.
- (2) The electronic Trial Book may be in one or more sequentially numbered volumes.

Pagination

- (3) The electronic Trial Book must have page numbers which correspond to the electronic display.

Headings

- (4) The documents contained in the electronic Trial Book should be grouped in topics with appropriate headings e.g., Claim Documents, Medical Reports, Affidavit Evidence.

Index

- (5) The electronic Trial Book shall be indexed with each document described in full in the index and numbered in chronological order from the earliest to the latest date. Each number of the index shall be hyperlinked to the corresponding document.

Bookmarks

- (6) Each document shall be bookmarked with a short name to facilitate navigation to each document included within each volume.

File name

- (7) The file name given to the electronic Trial Book should be the parent case number followed by the party names e.g., ET-21-09876 - John Smith v Return to Work SA.

Late Documents

- (8) Late added documents must be in a Supplementary electronic Trial Book that otherwise complies with these requirements.

Appeal Books

- (9) Where the President directs that an electronic Appeal Book will be lodged, this Practice Direction is to be followed.

PART 5 – CONCURRENT EXPERT EVIDENCE

24. Objectives

This Part relates to the exercise by the Tribunal of its special powers in accordance with r 69 of the SAET Rules to direct that expert witnesses confer prior to giving evidence and give evidence concurrently or in a particular sequence.

25. Identification and selection of cases

In deciding whether the concurrent evidence procedure should be used, the Tribunal will consider:

- (a) the nature and complexity of the issues in relation to which expert evidence is to be given; and
- (b) the areas of expertise and level of expertise of the experts who will be giving evidence; and
- (c) the likely impact of using the concurrent evidence procedure on the length of the hearing and the costs of the parties; and
- (d) whether both parties are represented; and
- (e) the views of the parties; and
- (f) other relevant factors.

26. The role of parties, their representatives and experts

- (1) Parties and their representatives must ensure that all relevant things are done to facilitate the use of the concurrent evidence procedure.
- (2) Experts must participate in the concurrent evidence procedure in good faith and must be willing to consider and comment on alternative factual premises and opinions, be willing to agree on matters and issues if appropriate, and must not be given, or accept, instructions not to reach agreement.

PART 6 CONDUCT OF HEARINGS

27. Telephone and video hearings

Hearings before Commissioners

- (1) Unless otherwise directed, directions hearings, including initial directions hearings, held before Commissioners, will be conducted by telephone or audio visual (AV) means.
- (2) Conciliation conferences held before Commissioners may, at the discretion of a Commissioner, be conducted:
 - (a) in person with personal attendance at the Tribunal;
 - (b) by telephone or AV;
 - (c) using a combination of in person, telephone and AV attendances.
- (3) Hearings held before Commissioners, including hearings to determine applications for an expedited decision under the *Return to Work Act 2014*, public sector grievances and industrial disputes, may at the discretion of a Commissioner:
 - (a) require personal attendance at the Tribunal;
 - (b) be conducted by telephone or AV;
 - (c) be conducted using a combination of in person, telephone and AV attendances;
 - (d) be heard and determined on the papers.

Hearings before Presidential members

- (4) Unless otherwise directed, pre-hearing conferences, directions hearings and compliance conferences held before Presidential members will be conducted by telephone or audio-visual means. At the discretion of the presiding member, in specific circumstances parties may be required to attend in person. Applications for directions may be determined on the papers.
- (5) Settlement conferences and mediations may, at the discretion of the presiding member, be conducted:
 - (a) in person with personal attendance by the parties at the Tribunal;
 - (b) by telephone or AV;
 - (c) using a combination of in person, telephone and AV attendances.
- (6) Unless otherwise directed, callovers will be conducted by email as follows:
 - (a) No later than two business days prior to the callover, the representatives are to contact the Tribunal to advise whether:
 - (i) the proceeding will be resolved by consent;
 - (ii) the hearing should be vacated for any other good reason;
 - (iii) the proceeding is suitable to be heard and determined on the papers.
 - (b) Contact with the Tribunal is to be by email to saet@sa.gov.au with the subject heading "Callover [date of callover], [name of parties], [case number]".
- (7) Hearings held before Presidential members and appeals may at the discretion of the presiding member:
 - (a) Require personal attendance at the Tribunal;
 - (b) be conducted by telephone or AV;

- (c) be conducted using a combination of in person, telephone and AV attendances;
- (d) be heard and determined on the papers.

Delivery of judgment

- (8) Unless otherwise directed, judgments will be delivered to the parties simultaneously via email.

Practical tips for AV participants

Guidelines about attending audio-visual hearings at SAET is available on the [SAET website](#).

28. Evidence by telephone or video, etc.

- (1) A party seeking to have their evidence or the evidence of a witness taken by telephone, audio visual means (AV) or other system or method of communication should apply to the Tribunal for an appropriate direction.
- (2) Where a party has been given permission for evidence to be given by telephone, AV or other system or method of communication, the party must:
 - (a) take all steps necessary to facilitate the giving of evidence in that manner, including arranging for the witness to be available and to have access to documents that are likely to be referred to during the hearing; and
 - (b) provide the Registry with the contact details of the witness, their availability and any other information required by the Registry.
- (3) The costs of a telephone or AV or other system or method of communication will be borne by the party who arranges the link, unless the Tribunal otherwise directs.

29. Electronic communications to and from the Tribunal

- (1) Subject to this Practice Direction and to any contrary direction of the Tribunal, communication by means of an electronic device to and from a court room during the conduct of proceedings is not permitted.
- (2) Paragraph (1) does not apply to Tribunal staff acting in the course of their office or employment.
- (3) Despite para (1) and subject to paras (4) and (5), a party to a proceeding which is being heard by the Tribunal, a lawyer or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.
- (4) Any electronic communication permitted by this direction must—
 - (a) be made in a manner which does not interfere with Tribunal decorum, not be inconsistent with Tribunal functions, not impede the administration of justice, and not interfere with the proceedings;
 - (b) not interfere with the Tribunal's sound system or other technology; and
 - (c) not generate sound or require speaking into a device.
- (5) Any electronic communication of evidence adduced, or a submission made in proceedings, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Tribunal has ruled on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes, whichever occurs last.

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- (6) For the purpose of this direction, **electronic device** means any device capable of transmitting and/or receiving information, audio, video or other matter (including, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).

30. Noise induced hearing loss cases

- (1) A significant amount of the Tribunal's resources are directed to cases involving issues relating to noise induced hearing loss (NIHL); whether that be a rejected injury, a rejected medical expense or a lump sum payment. In many of these cases the compensation sought is modest, such as the cost of a hearing aid. Consequently, in many NIHL cases the amount of time, expense and use of Tribunal resources is disproportionate to the amount of compensation at stake.
- (2) It is important to protect the resources of the Tribunal from abuse and to keep the costs to the parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate.
- (3) Accordingly, generally at the hearing and determination level, NIHL cases will:
- (a) be placed in the Fast Track Stream pursuant to r 155(1) of the SAET Rules;
 - (b) case managed and heard and determined by the Presidential member who has been allocated the case in that member's docket;
 - (c) not be listed in a callover.
- (4) In the Presidential member's discretion, any of the guidelines set out in (9) above can be dispensed with to best fit the circumstances of the case and in the best interests of the administration of justice.

31. Recording and transcription of proceedings

- (1) The Tribunal will record only those proceedings or parts of proceedings where the presiding member has directed that the making of a recording is appropriate.
- (2) A recording of proceedings or parts of proceedings before the Tribunal will only be transcribed where the presiding member has made a specific order to this effect. Running transcript (expedited provision) will only be ordered in exceptional circumstances.
- (3) Where a presiding member has ordered that Tribunal proceedings be transcribed, the parties may expect, unless otherwise advised before the proceedings, that a copy of the transcript will be provided to them on request free of charge. Transcription of proceedings is not guaranteed in every case, and is at the discretion of the presiding member who may elect only to record proceedings and retain an audio file in which case the parties can expect that a copy of the audio file will be provided to them on request free of charge.
- (4) Where the presiding member has directed that the proceeding be recorded but not transcribed, the audio file of the proceedings will be retained for a period of four years. A party who wishes to have the record of those proceedings transcribed may make written contact with the Registrar to facilitate their making a private arrangement at the expense of the requesting party for provision of a transcript of the proceedings.
- (5) A record of proceedings will not be transcribed if a proceeding settles either during or on completion of the hearing.
- (6) A record of proceedings will not be transcribed in relation to pre-trial contested interlocutory hearings unless specifically ordered by a member of the Tribunal.

32. Interpreters

- (1) An interpreting service to the Tribunal is provided by various contractors.
- (2) The service provides interpreting facilities during Tribunal hearings for parties to proceedings and persons required to give evidence as witnesses in Tribunal proceedings.
- (3) The service does not provide interpreters for representatives to take instructions from parties they represent or for communications during proceedings, except to the extent that the Tribunal is prepared to provide an interpreter to facilitate the conduct of a compulsory conference, a settlement conference, or a mediation.
- (4) Representatives of parties who require interpreting services should notify the Tribunal by providing appropriate information on any document initiating proceedings or as otherwise requested. It is essential that such requests be made immediately when the need arises to allow the maximum possible time for the necessary arrangements to be put into effect.
- (5) A request for interpreting services should provide the following information:
 - (a) the name, address and contact details of the representative requesting interpreting services;
 - (b) the language and dialect to be interpreted;
 - (c) the parties involved in the case;
 - (d) the date or dates the case is listed and the date or dates that the interpreter will be required; and
 - (e) the time the case is listed or the time that the interpreter will be required.
- (6) If for any reason the interpreter is no longer required (e.g., the case settles), the Tribunal must be notified at the earliest opportunity. Such notice should preferably be in writing (e.g., email) but, where notice is less than one day prior to the interpreting services having been required, telephone contact may also be made.
- (7) If an interpreter attends unnecessarily (e.g., due to late notice of cancellation) the charge to the Tribunal may be passed on to the party concerned.

33. Mediation

Where mediation is ordered pursuant to s 46 of the SAET Act, the parties are to be aware of the *SAET Guidelines for Mediation* on the [SAET Website](#).

34. Work Health and Safety Act 2012 Prosecutions

- (1) Sections 31, 32 and 33 of the WHS Act establish Category 1, Category 2 and Category 3 offences with regards to reckless conduct and failures to comply with health and safety duties. In all categories, there is a possibility that a penalty in excess of \$300,000 may be imposed.
- (2) Subsection 6A(6) of the SAET Act confirms that, where proceedings for a minor indictable offence are dealt with by a magistrate of the South Australian Employment Court, a fine that exceeds the maximum fixed by the relevant Act or \$300,000 (whichever is the lesser) cannot be imposed, nor can a sentence of imprisonment that exceeds the maximum fixed by the relevant Act or five years (whichever is the lesser) be imposed. In such instances, a judge of the Court would be required to impose the fine or sentence.
- (3) Where a prosecutor seeks the imposition of either a fine or a sentence that exceeds the limit that can be ordered by a magistrate of the Court, the proceedings are to be heard – both as to the questions of guilt and penalty – by a judge of the Court.

- (4) Where a proceeding has commenced before a magistrate of the Court, and it appears that either a fine or a sentence may be imposed that exceeds the limit that can be ordered by a magistrate, the prosecutor is under a positive obligation to raise that issue with the magistrate and seek the referral of the proceedings to a judge of the Court.

PART 7 – APPEALS

35. Appeal under the *Return to Work Act 2014* - Question of law

In accordance with s 26I of the RTW Act, a Notice of Appeal lodged against a decision made under the RTW Act must:

- (1) include a clear description of each question of law said to arise in the appeal;
- (2) include a clear description of each alleged error of law; and
- (3) refer to the relevant paragraph number(s) in the decision appealed against which contain each alleged error of law.

36. Stay of an order

- (1) Where a party seeks a stay, in part or in whole, of an Order from an appealed decision, that party is to file and serve an Application for Directions, with a supporting Affidavit setting out the details of the stay sought. That application is to be made bearing the case number from the appealed decision proceedings, not the case number allocated to the appeal proceedings.
- (2) Unless there is good reason not to, the stay application will be heard by the Presidential member whose Order is sought to be stayed.
- (3) Where the party seeking the stay asserts that good reason exists that a different Presidential member should hear the stay application, the Application for Directions should request a hearing before a different Presidential member and the supporting affidavit should set out the reasons why.
- (4) The Presidential member allocated to hear the stay will deal with that application as that member sees fit, including by a hearing on the papers.

37. Case citations – SAET Rules r 181

- (1) The summary of argument should include any case citations or other authority to be relied on. Where possible, it should include a hyperlink to any authorities cited upon which it is proposed to rely. Any case citation must include the particular pages or paras to which reference is intended to be made.
- (2) Photocopies of authorities should not be provided to the Tribunal, unless a party is intending to read passages from that authority to the Tribunal.
- (3) Any hyperlink to an authority cited, or photocopy of an authority provided to the Tribunal, if in the form of a medium neutral citation, must be in the Signed Portable Document Format (PDF/A) digitally signed by AustLII if that format is available.

PART 8 - OTHER MATTERS

38. Court attire and dress standard

Court attire

- (1) The Judges and Magistrates who are Presidential members of the Tribunal will not wear legal robes in any proceeding.
- (2) Counsel will not wear legal robes in any proceeding.

Dress standard

- (3) Corporate wear, such as formal trousers/skirt/dress, shirt, jacket and, where appropriate, tie, shall be worn by legal practitioners and other advocates in all proceedings before SAET.

39. Courtroom advocacy

- (1) The Tribunal acknowledges that it is often difficult for lawyers wishing to undertake the work of counsel to get the necessary courtroom advocacy experience. In that regard, the active participation in courtroom advocacy of lawyers already involved in the particular case is encouraged.
- (2) Where counsel is engaged, and where appropriate, counsel should look to opportunities for interested instructing lawyers to share some of the presentation of a case at hearing. Under counsel's direction, such opportunities may be to take a particular witness, or to put submissions on a particular topic, for example.
- (3) The Tribunal's encouragement of the sharing of the presentation of a case is extended to the situation where senior counsel and junior counsel are retained.
- (4) This Practice Direction is to be construed as an attempt to develop and improve the standards of advocacy in the Tribunal and is not to be used to unnecessarily increase the costs incurred by a party.

40. Assistance by a friend (McKenzie friend)

- (1) In proceedings before the Tribunal a party may be assisted by another person as a friend pursuant to s 51(2) of the SAET Act. In accordance with established principles such persons shall be referred to as a "McKenzie friend".
- (2) A party who is assisted by a McKenzie friend remains a self-represented litigant. A McKenzie friend has no entitlement to receive payment for any assistance provided.
- (3) The role of a McKenzie Friend is to provide support for a party appearing before the Tribunal, including by taking notes, helping with documents, and conferring with the party about the conduct of the case.
- (4) Where the Tribunal permits a party to receive assistance from a McKenzie friend, the Tribunal may regulate the manner in which the assistance is provided.
- (5) The Tribunal may refuse or withdraw permission for a McKenzie friend to provide assistance.
- (6) If requested by the Tribunal a McKenzie friend must provide their name, address and contact details.

41. Return of exhibits

- (1) Following the conclusion of the hearing and determination of a case and any relevant appeal processes, the Registry will advise the parties, or owners of exhibits accepted into evidence, in writing that the exhibits are available for collection within a specified time. Parties or owners of such exhibits should collect or arrange for the collection or return to them of returnable exhibits from the Registry within the time specified by the Registry, after which time the Registry will commence destruction in accordance with para (4) below.
- (2) The Registrar may make an arrangement with a party to retain an exhibit(s) for a longer time. A request that the Registrar do so must be made to the Registrar in writing prior to the due date for collection.
- (3) Exhibits may be retained on the file at the discretion of the Tribunal.
- (4) Subject to paras (2) and (3), uncollected exhibits will be destroyed six weeks after the date of the correspondence which advises that exhibits are available for collection.

42. Judgment delivery inquiry

A party is at liberty to invoke the following protocol where a decision has been reserved and no judgement delivered:

- (1) A party may inquire about progress of the judgment by letter addressed to the President of the Tribunal.
- (2) The party making such an inquiry will deliver a copy of the letter to all other parties to the action.
- (3) The identity of a party making such an inquiry is not to be disclosed other than to the President and the other parties to the action.

43. Consent Orders

Accuracy

- (1) The parties are to ensure the accuracy of their draft consent order before submitting same to the Tribunal for approval pursuant to s 47(2) of the SAET Act. The parties cannot assume that all drafting errors will be picked up before approval.

Style

- (2) When parties submit draft consent orders for the approval of the Tribunal, the following style guide is to be adhered to:
 - (a) Headings in bold and in capitals are to be used when orders deal with more than one proceeding: e.g., **ET-21-09876**.
 - (b) Parenthesis only, not parenthesis and quotation marks: e.g., (WPI), not (“WPI”).

- (c) Full name of a statute in italics when first mentioned, with abbreviation in parenthesis immediately afterwards, then the abbreviation thereafter: e.g., *South Australian Employment Tribunal Act 2014* (SAET Act), then SAET Act; *Return to Work Act 2014* (RTW Act), then RTW Act. The phrase 'the Act' is to be avoided.
- (d) Except to begin a sentence, small 'a' on applicant and small 'r' on respondent and such like: e.g., ... the applicant's lower back injury.
- (e) Except to begin a sentence, a provision of a statute or similar material is to be abbreviated as below:

Designation	Abbreviation	Plural
Appendix	app	apps
Chapter	ch	chs
Clause	cl	cls
Division	div	divs
Paragraph	para	paras
Part	pt	pts
Regulation	reg	regs
Rule	r	rr
Schedule	sch	schs
Section	s	ss
Sub-clause	sub-cl	sub-cls
Subdivision	sub-div	sub-divs
Sub-paragraph	sub-para	sub-paras
Subsection	sub-s	sub-ss
Sub-rule	sub-r	sub-rr
Table	tbl	tbls

- (f) No smaller than 11 font, no greater than 13 font.
- (g) Single line spaced.
- (h) Justified, not left align.

Enlarge the scope

- (3) Where the parties submit draft consent orders that seek to enlarge the scope of a proceeding, the following wording is to be adhered to:

Pursuant to s 65 of the *South Australian Employment Tribunal Act 2014* (or SAET Act if subsequently mentioned), with the consent of the parties these proceedings are enlarged to include the following questions that are not presently at issue in the proceedings:

1. ...
2. ... etc.

Lump sum compensation

- (4) Where the parties submit draft consent orders that include the provision for the payment of lump sum compensation pursuant to ss 56 and 58 of the RTW Act, they, by implication, are taken as giving an undertaking to the Tribunal that there has been an assessment pursuant to s 22 of the RTW Act of the degree of whole person impairment that underpins the orders.

44. Higher Courts costs scale

For the purposes of s 106(6) of the RTW Act, the relevant Supreme Court scale will be the Higher Courts costs scale under the *Uniform Civil Rules 2020 South Australia*.

45. Operative dates

- (1) The operative date, for the below practice directions, is 1 March 2023.
- (a) 15. Surveillance material.
 - (b) 18. Referral to Hearing and Determination.
 - (c) 20. Attendances by two representatives.
 - (d) 30. Noise induced hearing loss cases.
 - (e) 34. *Work Health Safety Act 2012* Prosecutions.
- (2) The operative date, for all other practice directions, is 13 July 2022.

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Dated this 1st day of March 2023



The Honourable Justice Steven Dolphin
President