



SOUTH  
AUSTRALIAN  
**EMPLOYMENT  
TRIBUNAL**

## **2022-23 Annual Report**

**SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL**

Riverside Centre, North Terrace, Adelaide

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

Contact phone number 8207 0999

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

Date presented to Minister: 23 August 2023

To:

The Honourable Kyam Maher MLC

Attorney-General

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

This annual report is to be presented to Parliament to meet the statutory reporting requirements of *South Australian Employment Tribunal Regulations 2015* and meets the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

Submitted on behalf of the South Australian Employment Tribunal by:

**The Honourable Justice Steven Dolphin**

President



Signature

23 August 2023

**Wendy Wakefield**

Registrar



Signature

23 August 2023

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## **SECTION A: REPORTING REQUIRED UNDER THE *PUBLIC SECTOR ACT 2009*, THE *PUBLIC SECTOR REGULATIONS 2010* AND THE *PUBLIC FINANCE AND AUDIT ACT 1987***

### **AGENCY PURPOSE OR ROLE**

The South Australian Employment Tribunal (SAET) is established under the *South Australian Employment Tribunal Act 2014* (SAET Act). SAET is a statutory independent tribunal and court that:

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

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

## OBJECTIVES

Section 8 of the SAET Act provides:

The main objectives of the Tribunal in dealing with matters within its jurisdiction are:

- (a) in the exercise of its jurisdiction, to promote the best principles of decision making, including—
  - (i) independence in decision making; and
  - (ii) natural justice and procedural fairness; and
  - (iii) high quality, consistent decision making; and
  - (iv) transparency and accountability in the exercise of statutory functions, powers and duties; and
- (b) to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with special needs; and
- (c) to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high quality processes and the use of mediation and alternative dispute resolution procedures wherever appropriate; and
- (d) to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
- (e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and
- (f) to act with as little formality and technicality as possible, including by informing itself in such manner as the Tribunal thinks fit; and
- (g) to be flexible in the way in which the Tribunal conducts its business and to adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

## **LEGISLATION ADMINISTERED BY THE AGENCY**

### **Establishing Act**

*South Australian Employment Tribunal Act 2014*

### **Conferring Acts**

*Return to Work Act 2014*

*Fair Work Act 1994*

*Fair Work Act 2009 (Commonwealth)*

*Construction Industry Long Service Leave Act 1987*

*Dust Diseases Act 2005*

*Education and Children's Services Act 2019*

*Equal Opportunity Act 1984 (s 95B(2) or s 98B only)*

*Fire and Emergency Services Act 2005*

*Industrial Referral Agreements Act 1986*

*Long Service Leave Act 1987*

*Police Act 1998*

*Public Sector Act 2009*

*Technical and Further Education Act 1975*

*South Australian Skills Act 2008*

*Work Health and Safety Act 2012*

## **ORGANISATION OF THE TRIBUNAL**

### **Presidential Members**

President Justice Dolphin

Deputy President Judge Gilchrist

Deputy President Judge Calligeros

Deputy President Judge Kelly

Deputy President Judge Rossi

Deputy President Judge Crawley

Deputy President Magistrate Lieschke

Deputy President Magistrate Cole (ceased 16 February 2023)

Deputy President Magistrate Eaton (commenced 1 December 2022)



**Registrars**

Registrar Wakefield

Deputy Registrar Jhunhunwala

Deputy Registrar Burchell

A/Deputy Registrar Hutchens (from 4 October 2022 to 30 June 2023)

**Commissioners**

Commissioner Willson

Commissioner Byrt

Commissioner Nardone

Commissioner Carrel

Commissioner Doggett

Commissioner Neale

Commissioner Georgeff

Commissioner Ward (ceased 22 August 2022)

Commissioner Cairney

Commissioner Sullivan

Commissioner Williams

Commissioner Kassapidis

Commissioner McDonald

Commissioner Story (commenced 21 November 2022)

Commissioner Brett (commenced 9 January 2023)

Commissioner Rogers (commenced 2 January 2023)

**Supplementary Commissioners**

Commissioner Hodge (commenced 6 June 2022 and ceased 6 March 2023)

Commissioner Sexton (commenced 6 June 2022 and ceased 6 March 2023)

Commissioner McMahon (commenced 1 July 2022 and ceased 31 December 2022)

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

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

## SECTION B: REPORTING REQUIRED UNDER ANY OTHER ACT OR REGULATION

### SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL REGULATIONS 2015

#### 9—Annual report

For the purposes of section 89(3) of the Act, a report must include the following particulars in respect of the financial year to which the report relates:

- (a) information relating to each category of reviewable decision considered by the Tribunal under the *Return to Work Act 2014* (according to the section of the *Return to Work Act 2014* under which the original decision was made) as follows:
  - (i) the number of applications considered by the Tribunal for each category of decision;
  - (ii) the proportion of the total number of disputes considered by the Tribunal under Part 6 of the *Return to Work Act 2014* that each category of decision represents;
  - (iia) the number of matters subject to a pre-hearing conference under section 45 of the Act for each category of decision;
  - (iib) the number of matters proceeding to a full hearing before the Tribunal for each category of decision;
  - (iii) a summary of the range of periods of time taken for each category of decision between the receipt of applications by the Tribunal and the resolution of matters (in relation to matters resolved in the relevant financial year).
- (ab) the number of actions for damages commenced before the South Australian Employment Court under Part 5 of the *Return to Work Act 2014*;
- (ac) the number of proceedings concluded under Part 5 of the *Return to Work Act 2014*;
- (b) the number of applications made to the Tribunal for an expedited determination of a matter under section 113 of the *Return to Work Act 2014*;
- (c) the number of extension of time applications granted by the Tribunal under section 100 of the *Return to Work Act 2014*;
- (d) the number of referrals made to independent medical advisers by the Tribunal under section 121 of the *Return to Work Act 2014*;
- (da) information relating to each category of proceedings considered by the Tribunal in respect of jurisdiction conferred on it by another Act (according to the section of the Act under which the application for the proceedings was made).
- (e) the number of reviews and appeals instituted under Part 5 of the Act.



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

The focus for 2022-23 continued to be on timely, efficient and effective dispute resolution for Return to Work matters. SAET received a total of 5085 *Return to Work Act 2014* (RTW Act) applications. This is a 4.5% reduction in RTW applications received compared to the 2021-22 financial year.

**Table 1.1 Applications Received and Resolved**

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Applications Received	450	456	483	406	428	467	394	398	446	338	418	401	5085
YTD No. Received	450	906	1389	1795	2223	2690	3084	3482	3928	4266	4684	5085	
Applications Resolved	544	532	527	473	541	427	314	439	483	449	603	532	5864
YTD No. Resolved	544	1076	1603	2076	2617	3044	3358	3797	4280	4729	5332	5864	

Of the 5864 RTW Act cases resolved in 2022-23, 71% (4146) were resolved at conciliation, and 29% (1718) were resolved at hearing and determination.

**Table 1.2 Applications Resolved in Conciliation or Hearing and Determination**

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Resolved at Conciliation	362	382	384	349	366	308	245	311	358	294	429	358	4146
Resolved at Hearing & Determination	182	150	143	124	175	119	69	128	125	155	174	174	1718

The majority of RTW Act cases received (78%) were applications about reviewable decisions.

**Table 1.3 Applications Received and Resolved**

Application Type	Received 2022-23	Resolved 2022-23	Received 2021-22	Resolved 2021-22
Reviewable Decisions (s97)	3981	4753	4332	4281
Expedited Decisions (s113)	1069	1070	962	958
Suitable Employment (s18)	35	40	28	38
Part 5 RTW Act damages actions	0	1	0	0
Total Lodged within SAET	5085	5864	5322	5277

The clearance rate is the number of resolved disputes as a percentage of lodged disputes. It is an indication of how effectively a court or tribunal is managing its case load. The clearance rate for RTW Act applications increased from 99% to 115%.

**Table 1.4 Clearance Rates**

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Monthly	121%	117%	109%	117%	126%	91%	80%	110%	108%	133%	144%	133%
Year to Date	121%	119%	115%	116%	118%	113%	109%	109%	109%	111%	114%	115%

**SAET Reviewable decisions****Table 1.5 SAET Reviewable Decisions by Category and Time to Resolution**

Reviewable Decision	Applications (1)	% of Total Lodged (2)	Percentage resolved (3)					Pre-hearing Conference (4)	Hearing (5)
			0-3 months	3-6 months	6-9 months	9-12 months	12+ months		
Average weekly earnings	179	4%	44%	34%	7%	8%	7%	17	1
Rejection of claim for physical injury	1700	43%	23%	22%	16%	12%	26%	419	24
Rejection of claim for mental injury	428	11%	28%	31%	13%	10%	16%	107	7
Territorial application of the Act	1	0%	50%	0%	0%	50%	0%	0	1
Employer's duty to provide work	1	0%	100%	0%	0%	0%	0%	0	0
Interim decisions about serious injury	73	2%	12%	17%	11%	16%	43%	29	3
Return to work services and plans	96	2%	48%	31%	9%	4%	8%	7	1
Re-determination of a claim / employer applications	80	2%	41%	23%	11%	7%	19%	13	2
Medical expenses (excluding pre-approvals)	165	4%	56%	13%	10%	3%	19%	11	0
Medical expenses - pre-approval	293	7%	31%	25%	17%	9%	18%	44	3
Reduction / discontinuance / variance / review of weekly payments	224	6%	38%	26%	12%	7%	16%	36	7
Lump sum - economic loss	290	7%	36%	24%	11%	11%	18%	27	5
Lump sum - non-economic loss	443	11%	30%	25%	10%	12%	23%	98	17
Claims relating to a worker's death as a result of a work injury	6	0%	13%	13%	13%	6%	56%	3	1
Decisions pursuant to <i>Workers Rehabilitation and Compensation Act 1986</i>	2	0%	0%	0%	7%	7%	86%	2	0
<b>TOTAL</b>	<b>3981</b>	<b>100%</b>						<b>813</b>	<b>72</b>

**Notes:**

1. The number of applications considered by the Tribunal for each category of decision.
2. The proportion of the total number of disputes that each category represents expressed as a percentage (of the total number of reviewable decision applications).
3. A summary of the time taken for each category of decision between the receipt of the application and its resolution - either by way of conciliation or by hearing and determination - expressed as a percentage.
4. The number of times a Pre-Hearing Conference was scheduled for the first time on a case.
5. The number of matters proceeding to a formal Hearing before a Presidential Member.

### Extension of time applications

In 2022-23, 528 initial applications for extension of time were allowed for the purpose of conducting conciliation. The issue of whether a substantive extension of time should be granted is dealt with if the matter is not resolved at conciliation.

### Referrals made to Independent Medical Advisers

Where medical questions arise, SAET may, on its own initiative or an application by a party, refer the medical question(s) to one of 48 Independent Medical Advisers (IMAs) for inquiry and report.

There were 45 referrals made during the reporting period.

**Table 1.6 Referrals to Independent Medical Advisers**

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	TOTAL
4	6	5	3	4	4	2	5	5	2	3	2	45

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

Table 2.1 provides a summary of other Act applications received and resolved during 2022-23 from other Act applications. There were a total of 1098 applications received and 1160 resolved during the 2022-23 financial year.

**Table 2.1 SAET Other Act Applications Received and Resolved**

Item	Total
Applications Received	1098
Applications Resolved	
Applications Closed at Registry	115
Applications Resolved at Conciliation	591
Applications Resolved at Hearing & Determination	454
Total Applications Resolved	1160



Table 2.2 provides a breakdown of the applications received and resolved during 2022-23 by application type and the time it takes to resolve an application. Resolution time is calculated from the time of lodgement to the time of resolution.

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

Application Type	Total Received	Total Resolved	% Resolved 0-3 Months	% Resolved 3-6 Months	% Resolved 6-9 Months	% Resolved 9-12 Months	% Resolved 12+ Months
<b>Monetary Claims</b>	<b>452</b>	<b>447</b>	49%	16%	10%	7%	17%
- State	57	62					
- Commonwealth	395	385					
<b>Industrial Disputes</b>	<b>79</b>	<b>102</b>	32%	17%	12%	9%	30%
<b>Unfair Dismissals</b>	<b>57</b>	<b>68</b>	68%	9%	12%	6%	6%
<b>Prosecutions</b>	<b>11</b>	<b>11</b>	0%	27%	27%	27%	18%
<b>Apprentices and Traineeships</b>	<b>27</b>	<b>37</b>	59%	14%	5%	5%	16%
- Disputes	22	26					
- Suspensions	5	11					
<b>Public Sector Grievances</b>	<b>22</b>	<b>31</b>	29%	29%	23%	6%	13%
- Reviews	18	27					
- Disciplinary Dispute	4	4					
<b>Construction Industry Long Service Leave Act 1987</b>	<b>4</b>	<b>7</b>	57%	14%	14%	0%	14%
<b>Education and Children's Services Act 2019</b>	<b>6</b>	<b>5</b>	40%	20%	20%	0%	20%
<b>Equal Opportunity Act 1984</b>	<b>5</b>	<b>5</b>	40%	0%	0%	0%	60%
<b>Fire &amp; Emergency Services Act 2005</b>	<b>2</b>	<b>2</b>	50%	50%	0%	0%	0%
<b>Dust Diseases Act 2005</b>	<b>57</b>	<b>55</b>	9%	38%	15%	15%	24%
<b>Recovery Actions</b>	<b>113</b>	<b>134</b>	2%	4%	6%	6%	82%
<b>Work Health and Safety Entry Permits</b>	<b>80</b>	<b>82</b>	99%	1%	0%	0%	0%
<b>Other</b>	<b>107</b>	<b>112</b>	37%	13%	15%	8%	27%
<b>Total</b>	<b>1022</b>	<b>1098</b>					

Table 2.3 provides a summary of the approval of awards and enterprise agreements during 2022-23.

**Table 2.3 Approval of Awards and Enterprise Agreements**

Item	Total
Applications Received	76
Applications Closed	62

### 3. Reviews and Appeals

Part 5 of the SAET Act provides for reviews of decisions of Commissioners and appeals from decisions of Presidential Members. The number of appeals, reviews and referrals has decreased in this reporting period.

Section 66 allows a decision of a Commissioner to be reviewed by a Presidential Member. In 2022-23 there was 1 review compared with 5 in 2021-22. The reviewed decision may be affirmed, varied or set aside.

Section 67 allows a decision of a Presidential Member to be appealed to a Full Bench of SAET. In 2022-23 there were 23 appeals against decisions of a Presidential Member compared with 43 in the previous year.

Section 22 allows a Presidential Member to refer a question of law to the Full Bench. In 2022-23 there were no referrals.

Section 68 allows for an appeal to the Court of Appeal from a decision of the Full Bench on a question of law if a Judge of the Supreme Court grants permission to appeal. There were 8 matters in 2022-23 where permission was sought to appeal a decision of the Full Bench to the Court of Appeal compared to 6 in 2021-22.

**Table 3.1 Reviews and Appeals against SAET decisions**

Reviews and Appeals	2021-22	2022-23
Review a decision of a Commissioner (s66)	5	1
Appeal of a decision to the Full Bench (s67)	43	23
Question of law referred to a Full Bench (s22)	1	0
Application to the Court of Appeal to appeal a Full Bench decision (s68)	6	8



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

### PUBLIC COMPLAINTS

Public complaints received by SAET	
Category of complaints by subject	Number of instances
Professional behaviour	1
Service delivery	5
Service quality	1
No case to answer	1

### SERVICE IMPROVEMENTS

Nature of complaint or suggestion	Services improved or changes as a result of complaints or consumer suggestions
Professional behaviour	Complaint was not substantiated.
Service delivery	Individuals concerned received additional support and counselling. System and process improvements made.
Service quality	Individual concerned received counselling.

### ADDITIONAL METRICS

	Total
Number of positive feedback comments	2
Number of negative feedback comments	2
Total number of feedback comments	4
% Complaints resolved within policy timeframes	87.5% (7 out of 8)