South Australian Employment Tribunal Rules 2024

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

These rules are the *South Australian Employment Tribunal Rules 2024* (Rules).

2. Commencement

The Rules will commence operation on the date they are published in the *South Australian Government Gazette*.

3. Revocation and transitional provisions

(1) Subject to this rule, the *South Australian Employment Tribunal Rules 2022* are revoked.

(2) A proceeding commenced in the Tribunal under the *South Australian Employment Tribunal Rules 2022* prior to the commencement date of the Rules will, subject to contrary direction of the Tribunal, be subject to the Rules from the date on which they commence operation.

(3) In any proceeding commenced in another jurisdiction prior to the commencement of the Rules which is transferred to the Tribunal, the Tribunal may:

(a) give directions to resolve any uncertainty about which rule applies to the proceeding or to a particular step in the proceeding;

(b) do anything else necessary to ensure smooth transition from one jurisdiction to another.

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

(1) The overriding purpose of the Rules, as they apply to proceedings in the Tribunal, is to facilitate the objectives of the Tribunal, and, in particular, to achieve 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 exercising any power given by the SAET Act or the Rules and when interpreting any rule 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 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 breach a duty identified in sub-rules (3) or (4):

(a) a solicitor or barrister representing a 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 they:

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

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

5. Overarching obligations, cost effectiveness and proportionality

(1) A party or a person appearing before the Tribunal must, in relation to a proceeding:

(a) act honestly;

(b) not engage in misleading conduct;

(c) not take a step that is frivolous, vexatious or an abuse of process;

(d) not make an assertion or response to an assertion for which they do not, on the material available at the time, have a proper basis;

(e) not take a step unless they reasonably believe that it is necessary to facilitate the resolution or determination of the proceeding;

(f) cooperate with the other parties and with the Tribunal in relation to the conduct of the proceeding;

(g) use reasonable endeavours to resolve or narrow the scope of a disputed issue in the proceeding by agreement;

(h) comply with the Rules and orders made by the Tribunal;

(i) be prepared for and ready to proceed with a hearing, directions hearing, trial, conciliation conference, settlement conference or mediation at the appointed time; and

(j) use reasonable endeavours to act promptly and minimise delay.

(2) Tribunal proceedings must be conducted efficiently, cost-effectively and by having regard to proportionality as defined in rule 6.

(3) 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 proceedings 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;

Note—

A list of Tribunal forms is contained in rule 12.

authorised representative means a person authorised to represent a party by a relevant Act and includes a solicitor, barrister or authorised officer of an industrial association where the context permits;

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

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

contact details means an address, telephone number, mobile telephone 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 a party 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 an application filed in response to an initiating application through which a respondent may seek a remedy from an applicant, or a response to an application for internal review under rule 22(2);

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 as described in section 19(3) of the SAET Act;

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 has the same meaning it has in the *Return to Work Act 2014;*

initiating application means any document by which a proceeding is commenced in the Tribunal 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 able to properly participate in a proceeding;

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

proportionality means ensuring that legal and related costs are reasonably proportionate to the monetary amount in issue;

registered agent means a person who is named on the list of registered agents maintained under section 26 of the *Fair Work Act 1994*;

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

Registry means the Tribunal registry;

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 is defined in rule 53(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 being 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 rules that apply generally to all proceedings 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 takes precedence over the general rule, subject to contrary order of a Presidential member.

7. Application of the Uniform Civil Rules

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

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

(1) The Tribunal may on application by a party or on its own initiative:

(a) give directions about the procedure adopted 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;

(c) vary any requirement in the Rules;

(d) dispense with compliance by any person, or by the Tribunal, with any requirement in the Rules, either before or after the time for compliance arises, and in doing so, may impose any condition or give any direction appropriate.

(2) Subject to sub-rules (3), (4) and (5) and to any contrary order by a Presidential member, an extension of time will automatically be granted to enable a proceeding to be conciliated.

(3) Sub-rule (2) does not apply to a proceeding brought in the original decision-making jurisdiction of the Court described in section 31A of the SAET Act.

(4) Sub-rule (2) applies to monetary claims and unfair dismissal claims made under the *Fair Work Act 1994* but does not apply to any other proceeding under that Act.

(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 directs.

(2) The seals of the Tribunal will be in the form that the President approves and placed 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 to assist the preparation and conduct of proceedings.

PART 2 - Assignment of additional non-criminal jurisdiction of the Court

11. Assignment of Acts or parts of Acts to the Court

(1) Proceedings assigned to the Court by a relevant Act will be heard by the Court.

(2) Subject to contrary order, in proceedings to which sub-rule (1) applies, conciliation or mediation in the part of the Tribunal that does not sit as the Court will take place before the proceeding is referred for hearing and determination.

PART 3 - Documents

12. Documents and forms

All documents filed with the Registry 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.

Note—

On the date the Rules commenced operation the forms below were in use. Forms may be changed from time to time and parties should consult the Tribunal website for a list of all current forms:

A02 – Application for Review (Return to Work) – section 99 *Return to Work Act 2014*

A03 – Application for Expedited Decision (Return to Work) – section 113 *Return to Work Act 2014*

A04 – Application for Suitable Employment (Return to Work) – section 18 *Return to Work Act 2014*

A05 – Seriously Injured Workers – Referral of Election to Receive Lump Sum Payment (Return to Work)- section 56A *Return to Work Act 2014*

A06 – Application for Payment of Wages – section 19 *Return to Work Act 2014*

A10 – Details of Additional Party

A18 – Application Long Service Leave

A19 – Application – General – (where no initiating application form is specified)

A20 – Application – General Civil Action - employment contract disputes – section 10(1) *Fair Work Act 1994*; recovery actions - section 66 *Return to Work Act 2014*; damages claims – Part 5 *Return to Work Act 2014*

A21 – Application – Dust Diseases Civil Action

A22 – Statement of claim – Civil Action - (must accompany any form A20 or form A21)

A24 – Application for Pre-Action Discovery

A25 – Information and Summons – section 6A SAET Act

A30 – Application - Unfair Dismissal – section 106 *Fair Work Act 1994*

A32 – Application for Enterprise Agreement – section 79 *Fair Work Act 1994*

A33 – Application to Interpret, or Restrain, or Award Matters – sections 8, 12 and 90 *Fair Work Act 1994*

A35 – Application to Register Association – section 120 *Fair Work Act 1994*

A35a – Register Association Statutory Declaration

A36 – Application for Release from Agreement – section 85 *Fair Work Act 1994*

A38 – Application – Monetary Claim – section 9 *Fair Work Act 1994*

A39 – Application – Pecuniary Penalty – section 546 *Fair Work Act 2009* (Cth)

A40 – Application to Alter Rules or Change the Name of a Registered Association – section 125 *Fair Work Act 1994*

A42 – Application to Vary or Rescind Enterprise Agreement – section 81 *Fair Work Act 1994*

A44 – Application to Vary or Rescind Enterprise Agreement (Transmission of Business) – section 81 *Fair Work Act 1994*

A45 – Notification of an Industrial Dispute or Grievance – section 17 *Fair Work Act 1994*

A46 – Application Regarding Best Endeavours Bargaining (Enterprise Agreement) – section 76A(3) *Fair Work Act 1994*

A47 – Application for New Registered Agent

A48 – Application for Renewal Registered Agent

A50 – Application under the Work Health and Safety Act – sections 112, 215, 229 and 255 *Work Health Safety Act 2012*

A51 – Application for Work Health and Safety Entry Permit – section 131(1) *Work Health Safety Act 2012*

A51a – Work Health and Safety Entry Permit Statutory Declaration – section 131(2) *Work Health Safety Act 2012*

A52 – Application to Disqualify a Work Health and Safety Representative – section 65(1) *Work Health Safety Act 2012*

A53 – Application to Revoke or Dispute WHS permit – sections 138 and 142 *Work Health Safety Act 2012*

A60 – Application for External Review (Public Sector) – section 62 *Public Sector Act 2009*

A65 – Application for Review (Education) – section 124 *Education and Children's Services Act 2019*

A68 – Application for Review (Police) – sections 48 & 52 *Police Act 1998*

A74 – Suspension of Apprentice or Trainee – section 64(1a)(a) *South Australian Skills Act 2008*

A75 – Disputes or Grievances (Apprentices or Trainees) – section 65 *South Australian Skills Act 2008*

A76 – Application for Review of Compliance Notice (SA Skills Commission) – section 63(3) *South Australian Skills Act 2008*

A80 – Application for Appeal Against Disciplinary Decision (Fire & Emergency Services) – section 49(1) *Fire and Emergency Services Act 2005*

A81 – Application for Appeal Against Nomination (Fire and Emergency Services) – section 29(2)(c) *Fire and Emergency Services Act 2005*

A94 – Application for Review of an Exercise of Administrative Power by a Registrar

A95 – Application for Internal Review – section 66 SAET Act

A96 – Notice of Appeal – section 67 SAET Act

P01 – Answer / Response

P02 – Application for Adjournment

P03 – Affidavit

P04 – Reply

P05 – Application for Directions

P06 – Notice of Party or Representative Details

P07 – Offer to Settle

P08 – Application to Withdraw

P09 – List of Documents

P10 – Request to Admit

P12 – Notice of Alternate Contentions

P13 – Statement of Issues and Contentions

P14 – Statement of Facts, Issues and Contentions

P15 – Application to Intervene

P16 – Application to Waive a Fee

P20 – Application for a Summons

P30 – Application to Enlarge Scope of Proceedings

P32 – Notice of Objection to Enlarge Scope of Proceedings

P33 – Application for Consent Orders

P33a – Sample Consent Orders

P36 – Referral to an Independent Medical Adviser

P38 – Application to Extend Time for Reconsideration

P39 – Result of Reconsideration

P40 – Response to Varied Decision – *Return to Work Act 2014*

P42 – Notice to be Heard – *Return to Work Act 2014* and *Fair Work Act 1994*

P50 – Affidavit of Amount Payable – *Fair Work Act 1994*

P55 – Third Party Action

P56 – Defence (Civil Actions)

P57 – Pre-Action Claim (Civil Actions)

P70 – Notice of Objection (Associations) – *Fair Work Act 1994*

P71 – Application to Amend

P71a – Amended Details of Application

13. Filing documents

(1) Any document, including any approved form, affidavit or expert report, that a party intends to rely on in a proceeding, must be filed with the Registry.

(2) Subject to sub-rule (3) and to exempted classes of documents, all documents must be filed with the Registry electronically by online lodgement facilities on the Tribunal website or by email if online lodgement facilities cannot be used.

(3) Subject to any applicable Practice Direction, a person or party that is unable to file a document electronically may seek the approval of a registrar to file the document in a non-electronic form.

(4) If a registrar grants approval under sub-rule (3) they may direct that a document be filed in paper form or some other form.

(5) The Registrar may determine that all documents, or specified classes of documents filed by some or all persons, or specified classes of persons, must be filed electronically using the online lodgement facilities on the Tribunal website.

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

(7) Failure to comply with this rule may result in a document not being filed.

14. Registrar may receive documents

Subject to rule 15(2), a registrar may receive an application that does not comply with the Rules on terms and conditions thought appropriate.

15. Registrar may refuse to receive documents

(1) A registrar may refuse to receive any application or document that does not comply with the Rules.

(2) A registrar must refuse to receive an application or other document for filing 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 to receive 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 should have been refused under this rule.

(4) The dismissal of an application under 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 of copies of documents to parties and other persons

(1) Subject to the Rules, where an initiating application is filed with the Registry, a registrar must within 3 business days serve a copy of the application and any supporting documents on:

(a) each other party to the proceeding; and

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

(2) If an initiating application is filed with the Registry within 3 business days of the hearing of a proceeding the initiating application relates to, 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 them 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 them under the Rules.

(3) Subject to the Rules, to achieve a just outcome in a proceeding before the Tribunal or to achieve the objectives of the Tribunal in section 8 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, a summons, a notice issued during the course of a proceeding or any direction or order made by the Tribunal) on any person that has a legitimate interest in the proceeding.

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

(5) If a person refuses to accept service of a notice or document, it may be served on them by placing the document near them and describing the document to them.

(6) A registrar is not obliged to serve a copy of any document on a person or entity if their whereabouts or contact details cannot be ascertained after making reasonable enquiry.

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, presume that a copy of the document has been served on the relevant party or person.

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

Examples—

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

2. An order for presumptive service might provide for the publication of notice of the document in a newspaper or newspapers or by sending it to a specified email address or some other electronic means.

18. Parties to serve copies of documents

(1) Subject to the Rules, any document that is not an initiating application must be served by the filing party on all other parties to the proceeding, and on any other person if required by the Rules or an Act, within 7 days.

(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 as the filing, or as soon after as possible; or

(b) as directed by a registrar; and

(c) an affidavit of service of the document on the other party or person may be ordered.

(3) A summons issued by the Tribunal under section 33 of the SAET Act must be served on the person named in the summons at least 5 business days before the date specified for attendance, or as otherwise directed by a Tribunal member.

(4) If an applicant serves a document initiating a proceeding on a party to the proceeding, the applicant must prove service of the document.

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

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

(b) how the person served with the document was identified; and

(c) how service was effected.

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

(7) Other than with documents which initiate a proceeding, where an Act does not prescribe a particular method of service of documents, service may be effected by email attaching the document to the usual email address of the party to be served.

(8) For the purposes of sub-rule (7), the usual email address of a party may be ascertained from the contact details provided by the party to the Tribunal or such other email address approved by the Tribunal.

19. Service of documents on a partnership, trustees or an 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 name of the partnership, 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 appears to manage or control a business operated under the trust.

(3) If a partnership or trust has been dissolved, any former member of the partnership or trustee of the dissolved trust the party initiating the proceeding seeks to proceed against must be served personally 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 manages or controls the business of the association.

PART 4 - Applications and responses

20. Applications

(1) Applications must be made in the approved form, set out the grounds of the application and the remedy sought and be accompanied by any prescribed fee or an application in the approved form to waive or reduce any prescribed fee.

(2) All applications made after a proceeding has been filed, including applications for general directions, must be made in the approved form, and if there is none, in an approved form, and must:

(a) describe the nature of the application and, if relevant, the Act and section/s under which the application is made; and

(b) set out the reasons why the application is made; and

(c) specify the orders, directions or remedy sought, including the amount sought if the application seeks a monetary amount.

(3) Any extension of time required to bring an application must be sought in an initiating application and the reasons why an extension of time is required and should be granted must be given.

(4) A person filing an application must provide details of any known requirement for:

(a) an interpreter;

(b) assistance with a disability;

(c) a cultural need or observance;

(d) the safety or security of a party or witness;

(e) any other reasonable requirement of a party or witness attending a conference or hearing which the Tribunal should be apprised of.

21. Commencement

An application is commenced on whichever is the later of:

(a) the date and time when the application is filed with the Registry; or

(b) if a fee is required to be paid under the Regulations in respect of the application, the date and time when 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 permitted by a relevant Act, a respondent to an initiating application brought under Part 3 of the SAET Act may, in a response, or separately, seek a remedy against the applicant (a counter-application), or seek a remedy against a party who is not yet a party to the proceeding (a third-party application) if the applicant or third party is responsible for all or some of the relief sought by the applicant.

(2) A respondent to an application for internal review or an appeal who seeks to have the orders complained of set aside or varied for reasons different to those given by the Tribunal may, in responding to the application or separately, file a counter-application for internal review or a cross-appeal.

(3) If a respondent contends that an application for internal review or an appeal should be dismissed for reasons different to those relied on in the decision under internal review or appeal, a Notice of Alternate Contentions in the prescribed form P12 which sets out the alternate grounds on which the decision should be upheld must

be filed and served on the applicant or appellant within 14 days of service of the application for internal review or appeal.

(4) A counter-application or third-party application must comply with any applicable rule.

(5) A response to a counter-application or third-party application must comply with any applicable rule.

(6) Subject to any time limit in a relevant Act, a counter-application or third-party application must be filed within 28 days of service of the originating application.

(7) A party must pay any prescribed fee applicable to a counter-application or third-party application at the time of its filing unless the prescribed fee is waived.

23. Responses

(1) Subject to the Rules, a response to an application must:

(a) be in the approved form P01; and

(b) answer and respond to the factual and legal assertions made in the application; and

(c) comply with any applicable rule.

(2) A response must be filed with the Registry, and a copy served on all other parties, within 14 days of service or receipt of an application.

(3) 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.

(4) Unless otherwise ordered by the Tribunal, each claim set out in an 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.

(5) A person filing a response must provide details of any known requirement for:

(a) an interpreter; or

(b) assistance with a disability; or

(c) a cultural need or observance; or

(d) the safety or security of a party or witness; or

(e) any other need of a party or witness who attends a conference or hearing which the Tribunal should be apprised of.

24. Reply

A party which has brought an application may file a reply to the response to the application in the approved form P04 within 14 days of being served with the response.

25. Amendments

(1) Subject to this rule, an application, response, counter-application or third-party application may be amended without permission of the Tribunal by filing and serving on all other parties an amended version of the document within 14 days of the date on which it was originally filed.

(2) A party who has already amended a document under sub-rule (1) may not do so again without permission of the Tribunal.

(3) Apart from sub-rule (1), a document filed with the Registry may only be amended with the permission of a Tribunal member.

(4) A registrar is expressly authorised to constitute the Tribunal for the purposes of sub-rules (1) and (2).

26. Withdrawal and discontinuance

(1) Subject to sub-rules (2), (3) and (6), a proceeding or part of a proceeding may be withdrawn without permission of the Tribunal by filing an Application to Withdraw in the approved form P08 and serving it on all other parties to the proceeding.

(2) If a relevant Act requires leave of the Tribunal to withdraw a proceeding, an affidavit advising if the party knows what the attitude of any other party to the proceeding to the proposed withdrawal must be filed along with an Application to Withdraw in the approved form P08.

(3) A proceeding brought in the Court's original decision making jurisdiction does not require leave of the Tribunal to be withdrawn or discontinued at any time and may be withdrawn or discontinued by filing an Application to Withdraw in the approved form P08 or a Notice of Discontinuance.

(4) Subject to sub-rule (5), a registrar must serve an Application to Withdraw on any other party to a proceeding and on any person whom a Tribunal member directs.

(5) Sub-rule (4) does not apply to proceedings brought under the *Dust Diseases Act 2005*, Division 10 of Part 4 of the *Return to Work Act 2014*, Division 4 of Part 5 of the *Return to Work Act 2014*, and section 10 of the *Fair Work Act 1994*.

(6) Subject to sub-rules (2), (3) and (7), if a final hearing has been set down, a party may only withdraw a proceeding with the consent of all other parties or the permission of the Tribunal.

(7) An applicant claiming relief under section 106 of the *Fair Work Act 1994* may file an Application to Withdraw at any time but will be subject to any costs order that the Tribunal may make under section 110(2) of the *Fair Work Act 1994*.

(8) The withdrawal of an application for internal review or an appeal does not affect the status of counter-applications or cross-appeals filed in the same proceeding.

(9) Subject to the following exceptions, and subject to any applicable provision to the contrary in an Act, 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.*

(10) Subject to any relevant Act, withdrawing or discontinuing a proceeding does not preclude the Tribunal from making orders in relation to costs of the proceeding.

27. Changes to contact details

(1) A party whose contact details change during the course of a proceeding must, within 7 days of the change, file with the Registry a written notice in the approved form P06 setting out the new contact details.

(2) When a party provides an email address to the Tribunal or another party, or sends an email to the Tribunal or another party, the email address provided or used will be taken to be the party's email address unless and until the party advises the Tribunal and all other parties of a change of email address in the approved form P06.

28. Oral applications

Notwithstanding anything to the contrary in the Rules, but subject to any provision in the SAET Act or a relevant Act, an application for any direction, interlocutory order or final order, and for any response, may be made orally or in such other manner as the Tribunal may determine subject to any condition thought appropriate, including requiring the party making the oral application to give notice to any other party.

PART 5 - Criminal jurisdiction

29. Procedure and practice

(1) The *Joint Criminal Rules 2022* apply to the procedure and practice of the Tribunal in relation to offences with such modifications that the circumstances of a particular case may make necessary.

(2) The Tribunal may modify the application of the *Joint Criminal Rules 2022* to the Rules, including by Practice Direction, either generally or in a particular case.

PART 6 - Review jurisdiction

30. Application of Part

This Part applies to applications for review made under Division 1 of Part 3 of the SAET Act.

31. Applications for review

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

(2) An application for review must include or be accompanied by:

(a) a list of all relevant documents;

(b) sufficient details of the complaints made about the reviewable decision to enable the decision-maker to understand any basis of the review;

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

(d) if the reviewable decision was not communicated to the applicant in writing, sufficient detail to enable the Tribunal to identify the decision, the decision-maker and any legislation under which the decision was made.

(3) If a registrar or Tribunal member considers that the detail provided in an application for review is insufficient, or necessary supporting documents have not been provided, the application for review may not be accepted by the Registry.

(4) Subject to sub-rule (5), where a registrar or other Tribunal member refuses to accept an application for review under this rule, a party is entitled to file a further application for review which complies with the Rules and any relevant Act within 14 days of the refusal.

(5) Where sub-rule (4) applies, the date of filing will be taken to be the date on which the original application for review was filed.

(6) The reconsideration process described in Part 22C commences from the date on which the subsequent application for review which complies with the Rules is filed, not the date on which the original application for review was filed.

32. Section 28 statements, documents and things

(1) For the purposes of section 28 of the SAET Act, the written statement of the reasons for a decision under review and any document or thing in the decision-maker's possession or control that may be relevant to the review of the decision must be filed with the Registry in a Book of Documents within 21 days from the date on which the decision-maker receives notice of an application for review.

(2) Subject to this rule and to any order of the Tribunal to the contrary, when a Book of Documents is filed with the Registry, the decision maker is to provide a copy of the Book of Documents to all other parties.

(3) Documents which are the subject of a claim of privilege, public interest immunity, some other immunity or other proper basis for non-disclosure are not to be provided to other parties.

(4) Where sub-rule (3) applies to a document, the decision-maker must provide a Book of Documents in separate parts or volumes of which:

(a) one part is clearly marked as containing materials which are only to be accessed by a Tribunal member and contains all documents to which

sub-rule (3) applies along with a clear statement of the basis on which the claim for privilege or non-disclosure is made for each document; and

(b) the other part contains all other material required by section 28 of the SAET Act and is provided to all other parties.

(5) 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 section 28(2)(a) of the SAET Act.

PART 7 - Original decision making jurisdiction

33. Application of Part

This Part applies to applications made:

(a) under an Act where the Tribunal is the original decision maker and as otherwise provided by section 31A of the SAET Act; and

(b) at common law or in equity.

34. Applications in original jurisdiction

(1) An initiating application in a proceeding where the Tribunal sitting as the Court is the original decision maker must be made in the approved form named in this rule.

(2) The approved form A38 is used in a monetary claim under s 9 of the *Fair Work Act 1994*.

(3) The approved form A20 is used in:

(a) employment contract disputes under section 10(1) of the *Fair Work Act 1994*;

(b) recovery actions under section 66 of the *Return to Work Act 2014*;

(c) damages and related claims under Part 5 of the *Return to Work Act 2014*.

(4) The approved form A21 is used in civil proceedings brought under the *Dust Diseases Act 2005*.

(5) In any other civil proceeding initiated in the Court, a form consistent with an equivalent form used by the District Court under the Uniform Civil Rules will be treated as being in the approved form.

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

(1) Unless the Rules or a Practice Direction provide otherwise, in an action for damages, breach of statutory duty, breach of contract or recovery of contribution under Part 5 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 in force from time to time apply.

(2) Any document filed in an action this rule applies to should be endorsed immediately below the case number the words “Damages Claim, Return to Work Act 2014”.

(3) If some other form of relief or remedy to that set out in sub-rule (1) is sought in a claim made under Part 5 of the *Return to Work Act 2014*, precise details of the nature of relief must be specifically pleaded and properly explained.

36. Actions under the *Dust Diseases Act 2005*

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

(2) Any document filed in a Dust Disease action should be endorsed immediately underneath the case number the words “Dust Diseases Act 2005”.

(3) Dust Disease actions 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 at the commencement of the proceeding or later, an interlocutory application seeking an urgent pre-hearing conference should be filed together with an affidavit which deals with, as fully as the circumstances permit, the following matters:

(a) the nature of the disease alleged;

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

(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 expert 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) On receipt of an application to treat a Dust Disease action as an urgent matter, the application will be listed for directions as soon as possible.

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

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

(1) Subject to any other sub-rule, 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 apply to proceedings seeking recovery of compensation under Division 10 of Part 4 of the *Return to Work Act 2014* (Recovery actions).

(2) Any document filed in a Recovery action should be endorsed immediately below the case number "Recovery Action, Return to Work Act 2014".

(3) Subject to sub-rule (4), a Recovery action must be served by an applicant on each and every other party to the proceeding within 6 months of being filed.

(4) An application for an extension of time to serve a Recovery action must be made by filing an interlocutory application and supporting affidavit which identifies:

(a) the ground on which the extension is sought and deposing to the facts relied on for an extension of time; and

(b) whether each other party has been informed of the institution of the proceeding and provided with a copy, and, if not, why not; and

(c) if the claimant is aware, whether the injured party has brought or intends to bring proceedings for damages in respect of the work injury/injuries which are the subject of the recovery action.

(5) If a Recovery action remains in the Inactive Matters List for 6 months or longer, a Registrar may dismiss the proceeding.

(6) The dismissal of a Recovery action under sub-rule (5) has the same effect as dismissing the proceeding for want of prosecution.

(7) An applicant may apply to reinstate a recovery action dismissed under sub-rule (5) by filing an interlocutory application and supporting affidavit which:

(a) identifies the grounds on which the application is made;

(b) explains why the applicant allowed the claim to be dismissed;

(c) deposes to the facts relied on for reinstatement; and

(d) establishes an arguable basis for the claim.

(8) In an application to reinstate a Recovery action under sub-rule (7) the Court may order that the interlocutory application and supporting affidavit be served on each other party to the proceeding.

(9) If it is in the interests of justice to do so, the Court may reinstate a Recovery action dismissed under sub-rule (5) although the time for commencing the proceeding has expired.

Note—

To be satisfied that an order should be made under sub-rule (9) the Court will usually need to be satisfied that the applicant has a reasonable explanation for allowing the action to be dismissed, that there is an arguable basis for the proceeding and that reinstatement will not cause undue prejudice to the respondent/s.

(10) After filing and serving a Recovery action an applicant may elect to place the proceeding under a moratorium by filing and serving an election in the same form as Form 15B under the Uniform Civil Rules and filing an affidavit of proof of service of the proceeding and the election forms.

(11) While a Recovery action is under a moratorium:

(a) it is not liable to be placed in the Inactive Matters List or dismissed (but this does not affect the power of the Court to dismiss the proceeding on a different basis);

(b) other parties to the proceeding are not required to file a response or defence and the time for them to take any step in the proceeding against the applicant does not begin to run;

(c) the applicant is not entitled to seek default judgment; and

(d) no party is entitled to take any step in the proceeding (except applying to remove it from the moratorium) or filing an Application to Withdraw in the approved form P08 or Notice of Discontinuance.

(12) A Recovery action will be removed from being under a moratorium when:

(a) the court receives proof that a party has given 2 weeks' notice to the other party or parties that it seeks to have the moratorium removed; or

(b) all parties consent to the moratorium being removed.

PART 8 - Interlocutory applications

38. Applications for specific or general directions

(1) Before making an interlocutory application, a party must endeavour to resolve the issue raised by the proposed application with all relevant parties by agreement.

(2) Subject to sub-rule (9) a party seeking general directions about the conduct of a proceeding under section 37 of the SAET Act or a specific interlocutory or non-final order must do so by an application for directions in the approved form P05 supported by an affidavit.

(3) Each application filed under this rule must:

(a) specify all orders which are sought; and

(b) refer to any provision/s of the SAET Act and/or a relevant Act which authorise the application; and

(c) provide any information required by an applicable Practice Direction.

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

(5) Unless a registrar or Tribunal member determines otherwise, an interlocutory application must not be listed to be heard at a scheduled hearing unless it has been filed and served on all other parties, not less than 3 business days prior to the scheduled hearing.

(6) As the Tribunal may deal with an interlocutory application on the papers, any submission, legal argument or fact asserted or relied on should be set out in the application or supporting affidavit.

(7) The Tribunal may refuse to make an order on an interlocutory application if the supporting affidavit does not depose that the parties have conferred to try to resolve or refine the subject matter of the application.

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

(9) If general or specific directions are sought while a proceeding is still at conciliation, sub-rules (2) to (8) do not apply and a Commissioner may refer an interlocutory application to a Presidential member immediately or after conciliation has concluded.

39. Enlarging the scope of a proceeding under section 65 of the SAET Act

(1) An Application to Enlarge the Scope of a proceeding under section 65 of the SAET Act must be made in the approved form P30 and a copy of the application and a notice of objection in the approved form P32 must be served on all other parties to the proceeding at least 14 days before the application is heard.

(2) If all parties to a proceeding agree to enlarge the scope of the proceeding and confirm their agreement in writing, a Tribunal member may order that the scope of the proceeding be enlarged in the terms agreed.

(3) If a Notice of Objection in the approved form P32 is not filed by any party within 14 days of being served with a copy of an application to enlarge the scope of a proceeding, all parties to the proceeding may be taken to have consented to the application.

(4) To rely on sub-rule (3) the party that seeks to enlarge the scope of the proceeding must notify the Registry and all the other parties that in the absence of a Notice of Objection being filed, it seeks to have orders made in terms of the application.

(5) A Tribunal member may refuse to enlarge the scope of a proceeding despite all parties to the proceeding consenting if the refusal is in the interests of justice or for other good reason.

(6) A Presidential member may revoke an order made to enlarge the scope of a proceeding if the revocation is in the interests of justice or for other good reason.

(7) If the Tribunal proposes to enlarge the scope of a proceeding at the request of one or more but not all parties, or of its own motion, it may hear from the parties as required by section 65(1)(a) of the SAET Act in such manner it chooses to.

(8) Where all parties to a proceeding submit or seek consent orders that involve the resolution of a question not presently in issue in the proceeding and have not expressly sought an order under section 65 of the SAET Act on the face of the consent orders, an order under section 65 will be deemed to have been sought and made and the consent of all relevant parties deemed to have been given.

40. Review under section 82 of the SAET Act

(1) An application to review a decision under section 82 of the SAET Act because a person did not appear and was not represented at a relevant hearing must be filed by an application for directions within 28 days of the Tribunal's decision and must include:

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

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

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

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

41. Directions made by consent

If a party served with an interlocutory application does not wish to be heard or consents to the orders sought being made and advises the Tribunal accordingly in writing prior to the application being heard, they may be excused from attending the hearing.

PART 9 - Compulsory conciliation conferences and other conferences

42. Compulsory conferences generally

(1) Subject to the SAET Act or a relevant Act, a compulsory conciliation conference under section 43 of the SAET Act and any compulsory conference under a relevant Act will proceed as set out in this Part and in any applicable Practice Direction.

(2) A compulsory conference in an industrial dispute will proceed in accordance with sections 21 and 22 of the *Fair Work Act 1994* and the directions of the Tribunal member who presides over the conference.

(3) Subject to contrary direction by a Presidential member, compulsory conferences will be conducted by a Commissioner.

43. Compulsory conciliation conferences

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

(2) An initial directions hearing is to be conducted within 21 days of an application being lodged.

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

(4) 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 required 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) whether the persons who will attend a compulsory conciliation conference have sufficient decision-making authority to fully participate in settlement discussions;

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

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

(6) The Tribunal member conducting an initial directions hearing may direct that a compulsory conciliation conference proceed immediately following an initial directions hearing if there are good reasons for doing so.

(7) 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 that it is appropriate to be scheduled.

44. Actions and powers of Commissioners generally

(1) A Commissioner may exercise such powers and give such directions as are reasonably required to conduct a compulsory conciliation conference effectively.

(2) A Commissioner may at any time contact a party, ask questions in relation to the issue in dispute and provide their view of the merits of the issue to be able to make 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;

(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) 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 section 121 of the *Return to Work Act 2014*;

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

(k) subject to rules 56(8) and (9), exchange information, including documents, to assist to resolve the dispute or narrow the issues in dispute;

(l) comply with their obligations under section 104(3) of the *Return to Work Act 2014* for disclosure to the Tribunal 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.

45. Requirement for parties and representatives to attend a compulsory conciliation conference

(1) An authorised representative of a party must attend a compulsory conciliation conference with the party.

(2) Any party and authorised representative who attends a compulsory conciliation conference is expected to participate in an active and constructive way and may be required to:

(a) detail the preparatory work undertaken 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 or parties may not be present;

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

46. Adjournment of compulsory conciliation conferences

An application to adjourn a compulsory conciliation conference must be accompanied by any document (such as a medical report or certificate) which supports the basis of the adjournment.

47. Actions taken if a dispute is not resolved

(1) If a dispute is not resolved at a compulsory conciliation conference conducted under section 43 of the SAET Act 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 Issues and Contentions or a Statement of Facts, Issues and Contentions be prepared by the parties;

(ii) ascertain what expert evidence (if any) each party intends to rely on, 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 section 43(13) of the SAET Act and which contains a summary of the nature of each dispute, the matters remaining in issue, and the positions of the parties.

(2) A written assessment of the merits made under section 43(13) of the SAET Act must be kept confidential from the Tribunal member who hears and determines the proceeding and is not admissible in proceedings before the Tribunal, except at the conclusion of a proceeding in the following circumstances:

(a) in proceedings under the *Return to Work Act 2014*, to consider whether an adverse costs order should be made under s 106(3);

(b) to make any order permitted by the SAET Act, a relevant Act or the Rules.

(3) Subject to sub-rules (6) and (7), a Tribunal member who conducts a compulsory conciliation conference or a settlement conference in a proceeding must not hear and determine the proceeding unless all parties consent.

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

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

(6) A Presidential member who conducts a pre-hearing conference or settlement conference may have regard to a written assessment of the merits of the case of each party under section 43(13) of the SAET Act but must not then hear and determine the proceeding unless all parties consent to that course.

(7) Sub-rule (3) 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 containing 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 under section 43(13) of the SAET Act may be provided to and considered by a Presidential member providing it does not contain any recommendation made by the person who conducted the compulsory conciliation conference.

48. Consequences of failing to properly participate in conciliation

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.

49. Recording offers made to resolve a proceeding

(1) If a party wishes to record an offer made to another party to resolve a proceeding, in part or whole, the offer must:

(a) be made in writing;

(b) be served on any party affected by the offer; and

(c) be filed with the Registry within 7 days of being served.

(2) Any detail of an offer recorded under sub-rule (1) is not to be provided to the Tribunal member who hears and determines the proceeding prior to a decision being made in relation to the proceeding.

(3) A party who has made an offer under sub-rule (1) and who seeks to make submissions in relation to the question of costs based upon the recorded offer may ask the Registry to provide a copy of the offer to the Tribunal member who decided the proceeding and advise that the party wishes to make submissions in relation to the award of costs that the party that the offer was made to should receive.

(4) This rule does not prevent a party who has made a written offer to another party to a proceeding to resolve the proceeding in part or whole that has not been recorded under sub-rule (1) from making submissions about the award of costs that should be made in relation to the recipient of the written offer.

PART 10 - Directions

50. 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 a proceeding, including but not limited to the following:

(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) discovery, inspection and production of documents;

(e) joinder of parties;

(f) enlarging the scope of the proceeding;

(g) requiring the provision of a Statement of Issues and Contentions or a Statement of Facts, Issues and Contentions or pleadings if 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) discovery 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 relevant consideration.

51. Directions at hearings and pre-hearing conferences

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

(a) make orders as to how evidence is adduced;

(b) limit the time for 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 taken in making any oral submission;

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

(f) limit the time taken to conduct a hearing;

(g) amend any prior direction or limitation.

(2) In making a direction under this rule a Tribunal member shall have regard to the following:

(a) whether the time allowed for a hearing or part of a hearing is appropriate;

(b) the principle that each party is entitled to a fair hearing;

(c) the complexity or simplicity of the proceeding;

(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 hearing lists;

(g) the amount of time the hearing is expected to take;

(h) the importance of the issues in the proceeding;

(i) any other relevant consideration.

52. Attendance in person

(1) A Tribunal member who has 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 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

53. Settlement conferences

(1) In this part:

settlement conference means a meeting or series of meetings where the parties meet and attempt to:

(a) resolve a proceeding by consent; and/or

(b) agree the facts in dispute; and/or

(c) narrow the issues in dispute.

(2) Under section 47 of the SAET Act a Presidential member may order that the parties to a proceeding 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 Tribunal member conducts a settlement conference and is advised of offers made to resolve the proceeding, the Tribunal member may not hear and determine the proceeding unless all parties consent or exceptional circumstances exist.

(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 with any legal or other representative recognised by the Tribunal.

(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 as evidence in the proceeding before the Tribunal.

(7) Sub-rule (6) does not affect the admissibility of evidence concerning a document produced in the course of or after a settlement conference if:

(a) all parties consent to the admission of the evidence or document; or

(b) there is a dispute about whether a proceeding or part of a proceeding was resolved by agreement at or after the settlement conference and the evidence or document is relevant to the issue; or

(c) there is a dispute about whether facts were agreed at or after a settlement conference and the evidence is relevant to the dispute;

(d) the substantive proceeding has been resolved and there is an issue about whether an adverse costs order should be made under section 106(3) of the *Return to Work Act 2014*, or whether some other order

permitted by the SAET Act, a relevant Act or the Rules should be made following resolution of the proceeding.

54. Mediation conducted outside the Tribunal

(1) Where mediation conducted under section 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) A person who conducts mediation outside of the Tribunal must conduct it in accordance with recognised ethical and professional standards for mediators.

(3) If a 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.

55. Mediation conducted by the Tribunal

Where mediation is conducted under section 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 - Discovery of documents

56. Discovery and production of documents

(1) In this Part and Part 10 the word 'discovery' means the requirement parties have in litigation to reveal the existence of documents and other materials to each other and not the requirement to disclose materials to the Tribunal in section 28 of the SAET Act.

(2) Unless a relevant Act provides otherwise, each party must discover 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.

(3) Unless a relevant Act provides otherwise, the Tribunal may at any time order a party or any other person to provide a list of documents in the approved form P09 and produce to the Tribunal and any other party to the proceeding, any document which is or has been in the possession of the party that is directly relevant to a material issue in the proceeding.

(4) Where a party or other person discovers documents which are not directly relevant to a material issue in a proceeding, an adverse order for costs, may be made against them that reflects the additional time and expense to which other parties have been put by the unnecessary discovery.

(5) Subject to any other sub-rule, a party is required to produce any discovered document within 7 days of a request for production.

(6) A party to a proceeding may decline to produce a document to which sub-rule (5) applies if:

(a) the document is privileged from production by operation of legal professional privilege;

(b) section 104(4) of the *Return to Work Act 2014* applies to the document; or

(c) in the opinion of the Tribunal there is some other compelling reason why the document should not be produced.

(7) If a party declines to produce a document during compulsory conciliation under sub-rule (6) the nature and basis of the objection to produce should be indicated in the index to the book of documents provided the party has provided a book of documents, or otherwise by a letter or in a list of documents.

(8) Subject to sub-rule (9), in a proceeding under the *Return to Work Act 2014* a party is not required to discover or produce evidence of still or moving images of a claimant taken without their knowledge or consent (the Evidence) after the proceeding is referred to hearing and determination unless:

(a) discovery and production of the Evidence is made by consent; or

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

(c) the decision in issue in the proceeding relies on a medical opinion that is wholly or predominantly based on the Evidence; or

(d) the claimant is aware of the Evidence and seeks that it be discovered and produced and the Tribunal is satisfied that, in the interests of justice, there are good reasons that require discovery and production of the Evidence.

(9) Regardless of any other sub-rule, in proceedings under the *Return to Work Act 2014* where a party possesses evidentiary material, the discovery of which could prejudice the investigation of a suspected offence (the material), the party possessing the material may make an ex parte application and seek exemption from complying with section 104(3) of the *Return to Work Act 2014* from the Tribunal member with conduct of the proceeding at the time.

(10) A Tribunal member who makes an order under sub-rule (8) may make any other order considered fair and appropriate in the circumstances, including orders designed to prevent the proceeding being prolonged unduly while a suspected offence is being investigated.

(11) Where a Commissioner orders production of a document or other thing and internal review is sought, the order is stayed until internal review is completed.

(12) The Tribunal may modify this rule in any way thought fit, including but not limited to, by use of the examples given in rule 73.14(2) of the Uniform Civil Rules.

57. Non-party discovery and production of documents

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

(a) discover in the approved form P09, or some other form approved by a Tribunal member, whether it has or has had possession, custody or power of any documents that appear to be relevant to a material issue in a proceeding, and identify any such documents;

(b) produce any document discovered under sub-rule (1)(a) or that otherwise appears to be relevant to a material issue in a proceeding to the Tribunal;

(c) comply with rule 56 as if the non-party was a party to the proceeding, with any modifications thought necessary; or

(d) verify the discovery made or production given by affidavit, or in person, and if in person, be questioned on the issue.

(2) A non-party required to discover or produce documents under this rule is entitled, subject to contrary order, to reasonable compensation from the party seeking the discovery, for time and expense taken to comply with the order.

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

58. 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).

59. Pre-action discovery

(1) This rule applies to actions to which section 31A of the SAET Act and Part 7 of the Rules apply and where an applicant who may have a cause of action against a person whose description has been ascertained (the potential party) seeks:

(a) to commence proceedings against the potential party; or

(b) to take proceedings against the potential party in the course of an action to which the applicant is a party, but the applicant, after reasonable enquiries, has not been able to obtain sufficient information to enable a decision to be made as to whether to commence or take the proceedings.

(2) If there are reasonable grounds for believing that the potential party had, has, or is likely to have had or to have, possession of documents that may assist in making the decision, the applicant may apply for an order under this rule.

(3) An application made under this rule must be made in the approved form A24 supported by an affidavit.

(4) A copy of an application and affidavit filed under this rule must be served on the potential party within 7 days of being filed.

(5) The Tribunal may order the potential party to give discovery of all documents that are or have been in the potential party's possession and that may assist the applicant in making the decision.

(6) If an applicant who has sought pre-action discovery does not commence a proceeding against a potential party, the applicant is liable to pay the reasonable costs of the potential party in responding to the application.

(7) If an applicant who has sought pre-action discovery commences a proceeding against a potential party, the costs of the pre-action discovery application are costs in the cause.

(8) A Tribunal member may reserve the question of costs of an application made under this rule until after any limitation period has expired.

PART 13 - Summonses

60. Form of summonses

(1) A summons issued to a person to give evidence or produce evidentiary material under section 33 of the SAET Act must be in the approved form P20.

(2) A summons to produce documents or evidentiary material may be issued to a person or body not a party to a proceeding without permission provided there is a legitimate forensic purpose for issuing the summons.

(3) If there is any conflict or inconsistency 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 22E of the Rules, the latter prevails to the extent of the conflict or inconsistency.

(4) A summons issued by the Tribunal is an order within the meaning of section 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;

(b) in the case of a summons to produce documents or evidentiary material, must comply with the terms of the specific order made and either:

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

(ii) send the summons or a copy, and the documents or other things, to a registrar at the place specified in the summons so they 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) The date to answer a summons by attending the Tribunal or producing documents or things may be varied by a registrar, with or without consultation with the parties, to a later date by giving notice of the later date to the summonsed party.

(3) A date varied under sub-rule (2) will be taken to be the date for compliance with a summons.

(4) 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 should try to resolve the objection with the party seeking the summonsed material before the date the summons must be complied with.

(2) If the objector is unable to resolve an objection to a summons informally, the objector must, before the date by which the summons must be complied with:

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

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

(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 evidentiary material, 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 a party or parties having access to the summonsed material, they may object to access being given, or may seek to have access to the summonsed material before any other 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 given to a person or party, they must inspect the summonsed material and advise the Tribunal in writing within 7 days of being given first access if they object to any other party having access to the summonsed material.

(6) A notice under sub-rule (5) must describe in sufficient detail the precise material to 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 is liable to pay:

(a) the reasonable expenses incurred in complying with a summons by the person or body that 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 monetary 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, ordered by the Tribunal.

PART 14 - Expert evidence

65. Duty of experts and application of Part

(1) An expert, other than a shadow expert as defined in rule 71, is not an advocate for a party and has a paramount duty, which overrides any duty to a party to the proceeding or other person who retains the expert, to assist the Tribunal impartially on matters relevant to the expertise of the witness.

(2) Subject to the rules concerning the evidence of independent medical advisers appointed under section 118 of the *Return to Work Act 2014*, the provisions of this Part apply whenever a party proposes to provide evidence from an expert witness in a proceeding, including a report from a health practitioner as defined by the *Return to Work Act 2014*.

(3) An expert report must include a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court.

(4) When an expert has provided to a party an expert report, and the expert subsequently changes their opinion on a material matter, the expert must as soon as practicable provide to the party a supplementary report that explains the nature and extent of the changed opinion and the reason for the change.

(5) 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.

(6) 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.

(7) A party is entitled to require the author of an expert report relied on by another party to be made available for cross-examination at a hearing.

(8) Some examination in chief of the author of an expert report required for cross-examination may be permitted at the discretion of the Tribunal member hearing the proceeding if it does not give rise to procedural unfairness to another party.

66. Content of expert reports

If a party proposes to rely on expert evidence in a proceeding, the party shall seek a written report from the expert, which shall:

(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 a party intends to rely on in a proceeding must be filed with the Registry, and a copy served on each other party along with a copy of the report's commissioning letter, within 7 days of the report being provided by the expert and not less than 14 days prior to the hearing and determination of the proceeding.

(2) Each party to a proceeding is to seek to ensure that any expert report on which a party intends to rely in a proceeding is filed with the Registry, and a copy served on each other party, no less than 3 business days prior to any pre-hearing conference under section 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; and/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; and/or

(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 the evidence is likely to be relevant.

69. Conferences, etc. of experts

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 that:

(a) expert witnesses confer with each other;

(b) expert witnesses produce for use by the Tribunal a document identifying the matters and issues on which they:

(i) agree; and

(ii) differ;

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

(d) the evidence of two or more expert witnesses be taken in a particular sequence, or with the experts both present together and asked in turn to answer questions from a Tribunal member, the parties or 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.

(3) In the case of a health practitioner who is medically qualified, sub-rule (2) applies to experts qualified to practice in a particular area or specialty of medicine or surgery.

71. Shadow experts

(1) A shadow expert 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 when the shadow expert is engaged, they give a certificate certifying that:

(a) the shadow expert understands that it is not their role to give evidence at a hearing; and

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

(3) Evidence of a shadow expert is not admissible at a hearing unless the Tribunal determines that there are special reasons that justify admitting 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 shadow expert; and

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

(5) Notification under sub-rule (4) must be given:

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

Where legislation permits the Tribunal to sit with supplementary panel members, the President may determine that the Tribunal will sit with supplementary members if requested to do so by one or more parties unless satisfied there is no advantage in doing so.

73. Experts and special referees

The remaining rules in this Part concern the referral of a question by the Tribunal to an expert under section 35 of the SAET Act or to a special referee under section 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 views of the parties about the proposal will first be obtained in writing or at a directions hearing.

75. Referral at request of the parties

(1) If parties jointly seek the referral of a question to an expert or special referee, they must seek that consent orders be made in the approved form P33 or apply to have the order sought made.

(2) An application for directions in the approved form P05 supported by an affidavit which seeks that an expert or special referee be appointed, whether made by consent or not, 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;

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

(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 an application for directions that satisfies sub-rule (2), the Tribunal may make an order referring a question or function to an expert or special referee or may seek written submissions from the parties or schedule argument in relation to the issue.

(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 other good reason.

PART 16 - Costs

A. Costs Generally

76. Awarding and assessing costs

(1) In any proceeding where there is an adjudication of the amount of costs a party is entitled to receive from another party, the following principles apply:

(a) parties are required to consolidate and expedite proceedings to avoid multiple hearings;

(b) the reasonableness of a claim for costs will be measured by reference to how a prudent and properly advised, but not overly cautious litigant, would act;

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

(2) A registrar 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 in the Tribunal who seeks costs must maintain an adequate record of their costs in accordance with the Higher Courts civil costs scale in the Uniform Civil Rules.

(2) A costs record must enable the party to formulate a claim for costs in accordance with rules 79, 81, 86(2) and 86(3).

(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 to produce a file and supporting documents in connection with an adjudication of costs, the lawyer must produce the file and all supporting documents with the Registry or a costs adjudicator on request.

(5) If a lawyer retains an electronic file only, and the Tribunal requires a copy, the lawyer must produce an electronic copy of the file in a format that can be conveniently downloaded and accessed, but not by universal serial bus (USB).

78. Consequences of not keeping a record of costs or producing a file

If a party fails to maintain an adequate record of the party's costs or produce a file after a request to do so, the Tribunal may:

(a) decline to award costs in favour of the party or reduce the costs awarded by such amount thought 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 thought 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 as adjusted from time to time.

80. Costs may be ordered at any stage

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

(2) If the Tribunal does not have jurisdiction to hear a proceeding it may nonetheless order that a party pay or receive costs in relation to the proceeding.

81. Costs orders

Where not precluded by a relevant Act, the Tribunal may order that:

(a) costs be awarded on a party/party basis, a solicitor/client basis or some other basis;

(b) interest be payable on an award of costs in respect of a time before a decision is entered for the costs;

(c) costs, including any interest, be awarded on a lump sum or a partial lump sum basis.

(d) an award of costs to a party be set-off against any liability that the party may have, including a liability for costs.

82. Presumptive costs

(1) Costs reserved but not otherwise the subject of a specific order will be treated as being part of any final costs order made.

(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 finalised and 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 is subject to contrary order of the Tribunal.

84. Discretionary factors

(1) In exercising discretion as to costs the Tribunal may have regard to any factors considered relevant.

(2) Factors relevant to exercising discretion as to costs include:

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

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

(c) whether an offer was made to resolve a proceeding;

(d) any response to an offer made to resolve a proceeding;

(e) the value and importance of the relief sought and/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) and attempt to agree the 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 for 21 days.

(3) A party that receives a genuine offer must respond to it within 14 days by:

(a) accepting the offer; or

(b) making a counter-offer of a fixed sum for the total amount of 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) If no response to a genuine offer is made within 21 days, or a claim for costs remains unresolved after offers made by both parties, the party claiming costs may file and serve on the liable party a claim for costs that complies with sub-rule (2) or sub-rule (3).

(2) A claim for costs must:

(a) be in a schedule in either Microsoft Word or Microsoft Excel format unless a registrar or Tribunal member permits otherwise;

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

(3) In the alternative to sub-rule (2), a party may seek an adjudication of costs by filing and serving on the liable party an application for directions in the approved form P05 and a supporting affidavit which contains sufficient detail to enable the Tribunal to conduct an adjudication of costs.

87. Response to a claim for costs

(1) The liable party must, within 28 days of service on it of a claim for costs under rule 86, file and serve a response which reproduces the formal claim for costs in a schedule in Microsoft Word or Microsoft Excel format and must:

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

(i) admitting the liability; or

(ii) admitting the liability to a specified extent; or

(iii) denying the liability and identify the reason for the denial; and

(b) if liability for an item claimed is accepted, complete the response quantum column in the schedule by:

(i) admitting the quantum claimed; or

(ii) identifying what the recoverable quantum should be and identify why.

(2) If the liable party does not respond to a particular item of costs in the schedule as 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 as required by sub-rule (1), the party seeking costs may seek that a costs judgment be entered for the total amount claimed for costs, counsel fees and external disbursements by filing an application for directions in the approved form P05 and an affidavit proving service of the claim for costs on the liable party.

(4) A party may request an interim costs award for the total amount admitted or taken to be admitted by the liable party in its response by filing an application in an approved form.

(5) The Registrar or Tribunal member presiding over an adjudication of costs may enter an administrative costs award for the appropriate amount on the filing of a request by a party under sub-rule (3) or (4) if satisfied it is appropriate to do so.

88. Reference for adjudication

(1) A Tribunal member assigned to adjudicate costs may convene a hearing to make orders or give directions about adjudication.

(2) Parties are to confer before an adjudication and attempt to resolve, limit or clarify the items in dispute.

89. General costs adjudication principles

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

(2) At an adjudication of costs, the party seeking costs must:

(a) at the request of the liable party, produce for inspection any documents which the party seeking relies; 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.

(3) A representative of a party shall not charge excessive costs.

(4) Costs charged at greater than the Higher Courts scale, as adjusted from time to time, shall, unless there are exceptional circumstances, be regarded as excessive.

(5) 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, an ex parte application for directions in the appropriate form P05 supported by an affidavit seeking dispensation from sub-rule (3) and explaining what the exceptional circumstances are, must be filed with the Registry.

(6) If an adjudication of costs is adjourned as a result of the default of a:

(a) party, the party should bear the costs; or

(b) 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, 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 more than three months from the date of order relating to costs will be treated as undue delay. However, particular circumstances including the institution of an appeal or other proceedings, which are interrelated, may constitute a good reason why there has not been undue delay.

91. Counsel fees

(1) The counsel fee indicator of the South Australian Supreme and District Courts indicator on counsel fees may be used as a guide to counsel fees.

(2) The counsel fee indicator is a guide and does not fetter the discretion of the Tribunal in relation to the award made 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 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 conduct an adjudication:

(a) a lump sum assessment, or otherwise determination of the amount of costs to be awarded in a wholesale manner;

(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 under rule 94(1), 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.

(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*

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.

(2) For the purpose of this rule, costs charged at greater than the Higher Courts costs scale as varied 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 under the *Return to Work Act 2014* at a rate greater than the Higher Courts costs scale, an ex parte application for directions in the approved form P05 supported by an affidavit seeking dispensation from sub-rule (2) and explaining the exceptional circumstances must be filed with the Registry.

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

(5) If a party to a proceeding under the *Return to Work Act 2014* 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;

the party is to advise a registrar of the complaint in writing and they shall then refer the matter to a Presidential member to deal with the complaint in accordance with section 107 of the *Return to Work Act 2014*.

(6) A registrar is authorised to inform parties generally of this rule and of the actions they may take if they believe that the amount of costs being charged is excessive or that an order under section 107 of the *Return to Work Act 2014* should be made.

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

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

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

(a) incurred improperly or without reasonable cause; or

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

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

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

PART 17 - Parties, representation 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 trustees to bring the action and must file with the Registry, with the initiating application, a list of the trustees at the time when 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 defending the action, file with the Registry a list setting out the names and addresses of the trustees of the trust at the time when 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 or entity be joined or removed as a party to a proceeding if satisfied that it is in the interests of the administration of justice to make the order after all parties have had an opportunity to be heard.

(2) An application to join a person as a party to a proceeding must be made in the approved form A10.

(3) 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 an application by 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 section 50 of the SAET Act or a provision of an Act which confers a right to intervene, an Application to Intervene in the approved form P15 must be filed and a copy served on all other parties to the proceeding within 3 business days of filing.

(2) Subject to section 50 of the SAET Act or a provision of an Act which confers a right to intervene, the Tribunal may grant leave to intervene on such terms considered just and appropriate and may vary or revoke leave to intervene at any time.

(3) An oral application for leave to intervene may be made at any time during a proceeding, subject to the right of any party that asserts they are disadvantaged by the application to have an opportunity to be heard.

(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 the company to be represented by a director or officer of the company providing that the Tribunal is satisfied that the person who is to represent the company has power to bind the company in relation to the conduct of the 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 of the entity who is familiar with the issues and who has the authority to bind the entity to any agreement.

103. Ceasing to represent a party

(1) Subject to sub-rule (2), an authorised representative whose instructions to act for a party in a proceeding have been terminated, or who wishes to cease acting for a party in a proceeding, may file a notice of ceasing to act in the prescribed form P06 within 7 days of ceasing to be instructed to act or advising a party they will no longer act for the party.

(2) If a trial or hearing is pending when a party terminates the instructions of an authorised representative or an authorised representative advises a party that they will cease to act for the party, leave of the Tribunal is required and the party or authorised representative must file and serve an affidavit with the prescribed form P06.

(3) A Tribunal member may hear from the parties about any relevant matter before granting leave under sub-rule (2).

104. Leave for a person other than legal counsel to represent a party

(1) In considering an application under section 51(1)(c) of the SAET Act for someone other than legal counsel to represent a party to proceedings (the proposed representative) the Tribunal will have regard to:

(a) whether the proposed representative has sufficient knowledge of the applicable law and the issues in dispute to enable them to represent the party effectively; and

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

(c) depending on the identity of the proposed representative or their relationship to the party, whether they have the consent of the party to represent the party and sufficient authority to bind the party; and

(d) whether the proposed representative may be a witness in the proceeding; and

(e) any other circumstance considered relevant.

(2) In granting leave under section 51(1)(c) of the SAET Act the Tribunal may impose such conditions on representation as thought appropriate.

(3) A Presidential member is required to grant leave under section 51(1)(c) of the SAET Act if the proposed representative has:

(a) been found guilty of professional misconduct (however described), or some other breach of a professional or occupational standard 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) been declared for the purposes of section 39 the *Supreme Court Act 1935* to have persistently instituted vexatious proceedings, or

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

(4) The Tribunal may revoke a grant of leave under section 51(1)(c) of the SAET Act if:

(a) the party no longer wants the representative to represent them; or

(b) the representative does not have the qualities described in this rule or fails to meet the requirements of this rule in acting as a representative; or

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

(d) some other good reason exists to revoke the grant of leave.

105. Application for assistance by a friend

(1) An application under section 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 in the appropriate form P05.

(2) In dealing with an application under section 51(2) of the SAET Act a Tribunal member will have regard to:

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

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

(c) whether the Assistant will deal fairly and honestly with the Tribunal and others involved in the proceeding;

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

(e) the nature and seriousness of the interests of the Person that will be affected by the proceeding;

(f) any other circumstance the Tribunal considers relevant.

(3) The Tribunal may impose any conditions on assistance considered appropriate.

(4) A Presidential member is required to grant permission under section 51(2) of the SAET Act for a proposed Assistant to appear if they have:

(a) been found guilty of professional misconduct (however described), or of some other breach of a professional or occupational standard, 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 proposed Assistant); or

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

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

(5) The Tribunal may revoke permission to act as an Assistant at any time if satisfied there are good reasons 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 section 105 of the *Return to Work Act 2014*.

107. Eligibility to be a 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 if:

(a) they are under a legal incapacity;

(b) unless the Tribunal otherwise orders, they have 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 brought 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, setting aside or varying any:

(a) step taken in the proceeding; or

(b) order made or judgment granted in the proceeding.

109. Proceedings involving litigation guardians

(1) Unless the Tribunal orders otherwise, any proceeding sought to be brought 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 the originating process.

(3) Subject to sub-rule (4), a proceeding 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, and may remove any litigation guardian on such conditions and with such consequential or transitional orders as thought fit.

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

(8) Unless the Tribunal orders otherwise, 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 all other respects, the roles and responsibilities of litigation guardians are to be 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) The resolution of a proceeding in which a litigation guardian or person under a legal incapacity is a party is not binding unless the Tribunal approves the terms of the proposed orders.

(2) Where orders are sought by consent in a proceeding in which a litigation guardian or a person under a legal incapacity is a party, the orders 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 enquiries and seek such further information as thought 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 and disbursed in keeping 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 - Hearings

111. Evidence

(1) The Tribunal will determine the way in which evidence will be given.

(2) Where a party is represented, the non-expert evidence-in-chief they rely on will usually be given by affidavit filed with the Registry and served on other parties.

(3) If it is not possible to file and serve a sworn or affirmed affidavit prior to a non-expert witness giving evidence, the Tribunal may allow an unsworn or unaffirmed document to be admitted into evidence if the representative of the party seeking to admit the document into evidence deposes or attests:

(a) to why it was not possible for an affidavit to be sworn or affirmed;

(b) that the document is based on the express instructions of the witness;

(c) that the witness has advised the representative that they have read the document and agrees that it accurately reflects their evidence; and

(d) that the witness has given an assurance to the representative that they will swear to or affirm the contents of the document at a hearing.

(4) Subject to contrary order, where a party is represented and seeks that a witness give evidence-in-chief other than by affidavit, an application for directions in the approved form P05 and supporting affidavit explaining how and why such evidence should be given must be filed and served on all other parties.

(5) In determining how expert evidence is given the Tribunal will have regard to Part 14 of the Rules.

112. Statements of Issues and Contentions

(1) To ensure that parties properly understand the issues in a proceeding, a Presidential member may order that a Statement of Issues and Contentions (SOIC) or a Statement of Facts, Issues and Contentions (SOFIC) be filed and served on all other parties to the proceeding.

(2) In general, a SOFIC will be ordered where the facts are in issue and a SOIC will be ordered where the facts are not contentious or materially important.

(3) A SOIC will not generally exceed 4 A4 pages and a SOFIC will not generally exceed 7 A4 pages.

(4) SOICs and SOFICs are to be set out in numbered paragraphs and contain a clear and cogent articulation of the issues in the proceeding, a succinct statement of the party's contentions in relation to each issue identified and, in a SOFIC, a cogent summary of facts material to the issues in dispute.

(5) The issues section of a SOIC or SOFIC is to be presented in neutral terms without describing the party's contentions in relation to any issue.

(6) SOICs and SOFICs are to respond to any fact, issue or contention raised by any other party in a previously filed SOIC or SOFIC.

(7) Where at a hearing a party seeks to raise an issue or make a contention that has not been identified properly or at all in a SOIC or SOFIC, or that is materially different to the issues and contentions that have been identified, the Tribunal member hearing the matter may refuse to allow the issue or contention to be raised or made.

PART 19 - Fair Work Act

A. Monetary claims and employment contract claims

113. Attendance at conciliation or mediation

(1) All parties to a claim made under section 9 or 10 of the *Fair Work Act 1994* must attend a compulsory conference or, if ordered by a Presidential member, mediation.

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

(3) In deciding whether to order mediation rather than a compulsory conference the Court will have regard to the number of applicants, the amount of the claim or claims advanced and the legal and factual complexity of the matter.

(4) If an applicant fails to attend a compulsory conference or mediation as required by sub-rule (1), or a subsequent hearing in person or by representative, the Tribunal may, if satisfied that the applicant had reasonable notice and a reasonable opportunity to be heard, dismiss the application.

B. Industrial applications

114. Service of monetary claims and employment contract matters

(1) In any proceeding under section 9 of the *Fair Work Act 1994* and section 545 or 546 of the *Fair Work Act 2009* (Cth), the Tribunal is to serve the proceeding on any respondent.

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

115. Advertisement of industrial applications

(1) The Tribunal may satisfy itself as it sees fit that reasonable notice of the substance of an application has been given under section 18(1) of the *Fair Work Act 1994*.

(2) In advertising or communicating notice of the substance of an application and when it will be heard to all persons likely to be affected under section 18(2) of the *Fair Work Act 1994*, the Tribunal may use one or more of the following means:

(a) a notice placed in a metropolitan weekday newspaper;

(b) a notice placed on a notice board at a workplace;

(c) an email sent to employees of an employer, members of a trade union or members of an employer body;

(d) any other means considered to be effective in the circumstances.

(3) The Tribunal member with conduct of a proceeding to which this rule applies may consult with the parties to determine how and to whom notice of an application is communicated.

(4) If notice is not given under section 18 of the *Fair Work Act 1994* immediately upon a proceeding being commenced, the Tribunal may nonetheless take steps to notify persons likely to be affected by the application.

C. Other industrial proceedings

116. Enterprise Agreements

(1) Parties seeking approval 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 in the approved form A32.

(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 notice is issued under sub-rule (2) and an eligible person wishes to be heard, they must advise the Tribunal and the parties in writing within the period specified in the notice under sub-rule (2).

(4) Except in the case of a provisional enterprise agreement, an affected employer must on receipt of a copy of any notice issued by the Tribunal under sub-rule (2), display the notice in accordance with this rule on a noticeboard or equivalent at the relevant workplace/s and circulate the notice by email to all affected employees.

117. Applications to interpret an award or agreement

(1) An application for interpretation of an award or agreement is to be made in the approved form A33 by any party bound by or claiming to have an interest in or a benefit from, the award or agreement.

(2) An application under sub-rule (1) 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 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.

118. 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) A registrar must settle all minutes of awards (including variations, rescissions and any orders affecting awards) made by any Tribunal member.

(3) Subject to any contrary order of a Tribunal member, a 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 an award, a registrar must if requested by a party, or may on their own initiative, refer the proceeding to the Tribunal member who heard and determined the proceeding for advice about the form the award should take.

(5) A registrar must publish a notice on the Tribunal website to advise that a determination has been made in an award proceeding within 7 days of the determination being made.

119. Outworker remuneration claims

A claim by an outworker for an amount payable by an apparent responsible contractor under section 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 section 99H of that Act will be made and dealt with for the purposes of the Rules as if it was a monetary claim under section 9 of that Act.

120. Unfair dismissal proceedings

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

(2) If an applicant fails to attend a compulsory conciliation conference or a subsequent hearing in person or by 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 section 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 section 106 of the *Fair Work Act 1994* or other relevant Act purports to refer an application to the Tribunal pursuant to section 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.

121. 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 A45.

(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 A45 and submit the form within 2 business days of making the oral application.

(3) Immediately after giving notice under sub-rule (1) or (2), the party seeking the Tribunal's assistance must serve the approved form A45 on all other parties to the dispute.

(4) Subject to section 19 of the *Fair Work Act 1994*, the Tribunal may order whether an industrial dispute proceeds by way of conciliation, mediation, arbitration or determination and may vary such order from time to time.

D. Registered Agents

122. Application for Registration

An application for registration as a registered agent under section 26 of the *Fair Work Act 1994* must be made in the approved form A47 or A48. (Form A47 is to be used by a new registered agent and form A48 is to be used to renew the registration of a registered agent).

E. Registration of Associations - Locally Based Associations

123. Application for Registration

(1) An association wishing to obtain registration under Chapter 4, Part 2 of the *Fair Work Act 1994* must file with the Registry an application in the approved form A35 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 A35a.

(2) The members of the applicant association must have subscribed to, or otherwise have 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 registration of the association under the *Fair Work Act 1994*.

(4) Regardless of 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 or other means approved by the Tribunal.

(5) 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.

(6) To comply with the requirements of section 124 of the *Fair Work Act 1994*, the rules of an association must:

(a) specify the:

(i) name of the association;

(ii) nature of its membership;

(iii) 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 on 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.

(7) The conditions set out in sub-rules (2), (3), (4), (5) and (6) are the prescribed conditions for the purposes of section 122(1) of the *Fair Work Act 1994* and must be met unless waived in accordance with sub-rule (8).

(8) 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 for which waiver is sought.

(b) The Tribunal will exercise its power to waive any prescribed condition on such terms and conditions considered appropriate.

(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 (8)(c) will constitute compliance with the prescribed conditions.

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

124. Alteration to rules of a registered 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 A40.

(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 on an application made to it by the association.

125. Objections to Alteration to Rules of a registered association

(1) An objection to a proposed alteration to the rules of an association 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 section 125 of the *Fair Work Act 1994*.

126. Change of Name

(1) An application for a change of name of an association under section 125(2) of the *Fair Work Act 1994* must be made in the approved form A40.

(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.

127. Compliance with rules

An application under section 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 an approved form.

128. Accounting Records

For the purposes of section 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.

129. Amalgamation of Associations

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

(a) be in an 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 section 129.

(2) A request for the Registrar to conduct a ballot under section 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.

130. Deregistration of Associations

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

F. Registration of Associations - Federally Based Associations

131. Application for Registration

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

(a) an application in the approved form A35;

(b) a copy of the rules of the association registered under the *Fair Work (Registered Organisations) Act 2009* 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 that Act seeks registration, proof that its rules comply with section 131(2) or 131(3) of the *Fair Work Act 1994*;

(c) a statutory declaration, in the approved form A35a, 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.

132. Change of Name

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

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

133. Deregistration of Associations

An application for deregistration of an organisation or a branch of an organisation registered under rule 131 must be made in an approved form.

G. Registration of Associations - General

134. Objections to Registration

(1) An objection under section 121 or 133 of the *Fair Work Act 1994* must be in the approved form P70 and be filed with the Registry within 21 days of the publication of the notice required by section 120(2)(a) or 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 relied on 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 grounds.

(4) Within 7 days of a notice of objection being filed with 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.

135. 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.

136. 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 new address.

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

H. Associations - Conscientious Objection

137. Conscientious Objection

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

PART 20 - Fire and Emergency Services Act

138. 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 21 - Public Sector Act

139. Procedure

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

(2) A Tribunal member may dispense with a compulsory conciliation conference and/or a pre-hearing conference in a review under the *Public Sector Act 2009*.

PART 22 - Return to Work Act

A. Special jurisdiction to expedite decisions

140. 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 with the Registry an application to expedite a decision under section 113 of the *Return to Work Act 2014* in the approved form A03.

(2) An application to expedite a decision must be accompanied by a copy of any relevant documents, including any correspondence from the applicant making a request for the claim to 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 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 of any such materials to all other parties.

B. Certain applications for Review

141. 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 section 5 of the *Return to Work Act 2014*, and a review or reviews of weekly payments has or have been undertaken under sections 46, 47 or 60 of the *Return to Work Act 2014*, any such review will be taken to be subject to and covered by the application for review.

(2) In a proceeding to which sub-rule (1) applies, only one award of costs may be made if an application or applications for review have been brought in relation to sections 46, 47 and 60 reviews of weekly payments.

C. Reconsideration - section 102 Return to Work Act

142. Confirmation of a decision under review

(1) If a compensating authority confirms a decision under review pursuant to section 102 of the *Return to Work Act 2014* it must file with the Registry a Result of Reconsideration in the approved form P39.

(2) A filed Result of Reconsideration which confirms a decision under review is a response for the purposes of the Rules.

143. Variation of a decision under review

(1) If a decision under review is varied or set aside, the compensating authority must file with the Registry a Result of Reconsideration in the approved form P39 which complies with section 102(3)(b) of the *Return to Work Act 2014*.

(2) A filed Result of Reconsideration which varies a decision under review is a response for the purposes of the Rules.

(3) If a filed Result of Reconsideration varies a decision under review, the compensating authority must serve the document on all affected parties regardless of whether a Notice of Representative Details has been filed by them.

(4) Any party that receives a filed Result of Reconsideration which varies a decision under review must file with the Registry a Response to Varied Decision in the approved form P40 within 14 days.

(5) If no party files a Response to Varied Decision under sub-rule (4) within 14 days, an order will be made confirming the variation made to the decision under review.

(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.

144. Procedure when a varied decision is accepted

If the party seeking review of a decision accepts the decision after reconsideration they must file a Response to Varied Decision in the approved form P40.

145. Procedure when a varied decision is not accepted

(1) If the party seeking review of a decision does not accept the decision after reconsideration, they must file a Response to Varied Decision in the approved form P40 explaining why the varied decision is not accepted.

(2) If another party does not accept the decision after reconsideration, they must file a Response to Varied Decision in the approved form P40 explaining why the varied decision is not accepted.

146. Extension of time for reconsideration

(1) Where a compensating authority seeks an extension of time in which to reconsider a decision under review it must apply to the Tribunal in the approved form P38 at least 2 business days before the date on which the reconsideration is due.

(2) An application for an extension of time under sub-rule (1) may, at the discretion of a registrar, be determined either with or without consultation with the parties.

(3) If an extension of time sought under sub-rule (1) is granted , the amended date on which the reconsideration is due is the date on which a response is due under the Rules.

147. 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 section 102 of the *Return to Work Act 2014*, or within such further time as ordered by a registrar, the decision under review will be taken to have been confirmed.

D. Independent Medical Advisers

148. IMA Guidelines

The referral of a medical question to an independent medical advisor (IMA) must be consistent with the IMA Guidelines published by the Tribunal in relation to the following procedures or subjects:

(a) the procedure to adopt when making a referral to an IMA;

(b) the conduct of any medical examination by an IMA;

(c) the provision of a medical report or reports by an IMA;

(d) payment for a medical report produced by an IMA;

(e) making arrangements for an IMA to give oral evidence at a hearing.

E. Summonses for medical records

149. Procedure to be followed where medical records are summonsed

(1) In a proceeding under the *Return to Work Act 2014*, other than an action for recovery of compensation under sections 66(5) or 66(6), a party must not issue a summons for production of a person's medical notes, imaging, reports or other documents (medical records) without permission of the Tribunal.

(2) If the Tribunal grants permission to issue a summons for medical records under this rule the application for the summons must be accompanied by evidence of payment of $100 or such other amount as may be prescribed from time to time to the recipient of the summons.

(3) When summonsed medical records are provided to the Registry, a registrar must give the person to whom the medical records relate 7 days, or such lesser time ordered by a Tribunal member, to consider the records before they are released to the party issuing the summons and any other party to the proceeding.

(4) A person whose medical notes are summonsed may apply to the Tribunal to limit the extent of the medical notes released or to have part of the medical notes redacted if they are not relevant to the proceeding.

(5) All parties to a proceeding must be advised of an application made under sub-rule (4) but the application may be made ex parte and need not be served on any other party unless the Tribunal orders otherwise.

(6) In considering an application made under sub-rule (4) a Tribunal member may have regard to all medical records produced in response to a summons and may order the non-release or redaction of such part of the medical notes that are not relevant to a proceeding.

F. Approval of certain settlements

150. Procedure where approval of a settlement is required

(1) Subject to section 47(3) of the SAET Act and section 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 section 191 of the *Return to Work Act 2014*, the parties must advise the relevant Tribunal member that such consent is required or has been given.

(2) In a proceeding 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 in the approved form P05 and a supporting affidavit be filed and may issue such directions and adopt such procedures considered appropriate to deal with the issue.

151. Infants and persons under a legal disability

(1) Where a proceeding under the *Return to Work Act 2014* concerns the rights or obligations of an infant or a person under a legal disability, any settlement must be approved by a Presidential member.

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

G. Suitable employment applications and notices

152. Applications for suitable employment under section 18

An application for suitable employment under section 18 of the *Return to Work Act 2014* will proceed to an initial directions hearing under section 43(1) of the SAET Act at which a date for a compulsory conciliation conference will be given unless a Tribunal member orders otherwise.

153. Written notices under section 18

An application seeking an order for the provision of suitable employment under section 18(5) of the *Return to Work Act 2014* must be made by the approved form A04 and must be accompanied by the following documents:

(a) a copy of the written notice given to the pre-injury employer under section 18(3) of the *Return to Work Act 2014*;

(b) any supporting evidence of the worker's capacity for work required by section 18(4) of the *Return to Work Act 2014*;

(c) a copy of the written notice provided by the pre-injury employer under section 18(4b) of the *Return to Work Act 2014*, and if there is none, written confirmation that no written notice has been provided.

H. Miscellaneous applications and notices

154. Payment of wages for alternative or modified duties

An application for payment of wages or salary for alternative or modified duties under s 19 of the *Return to Work Act 2014* must be made in the approved form A06.

155. Applications under section 48(18)

An application made by an employer under section 48(18) of the *Return to Work Act 2014* to direct the Corporation to carry out or expedite a review of weekly payments to a worker must be made by an application for directions in the approved form P05 supported by affidavit.

156. Schedule 1 *Workers Rehabilitation and Compensation Act 1986* 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 to make such orders and directions thought necessary having regard to the nature of the proceeding.

157. 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 section 96(d) of the *Return to Work Act 2014* and section 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 a proceeding but has not lodged and does not wish to lodge an application for review, they must file a Notice to be Heard in the approved form P42.

(3) The Tribunal will serve a Notice to be Heard on all other parties to a proceeding.

(4) 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 commencement of the conference or hearing, a Tribunal member may proceed with the conference or hearing as if a Notice to be Heard had not been filed.

(5) If a party fails to attend 2 or more conferences or hearings after filing a Notice to be Heard, a Tribunal member may order that the notice be dismissed and proceed with a conference or hearing in the absence of the party.

(6) The Tribunal may permit a party who has filed a Notice to be Heard to cease being involved with a proceeding and/or dismiss the Notice to be Heard and make any consequential order necessary or appropriate in the circumstances.

I. Fast Track Stream

158. Eligibility of proceedings to enter the Fast Track Stream

Proceedings which are non-complex or of narrow compass and able to proceed to a hearing in a relatively short time may be placed in the Fast Track Stream (FTS).

159. 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 or have a narrow compass 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 proceedings suitable for the FTS.

160. 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.

161. 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) the complexity of the issues in dispute;

(c) whether it would be unfair to a party to proceed in the FTS;

(d) whether the credibility of any witness is in issue;

(e) advantages and disadvantages of placing the proceeding in the FTS;

(f) whether the proceeding is likely to be concluded in a day;

(g) whether there is a need for oral evidence;

(h) the number of witnesses required to give oral evidence;

(i) the anticipated time taken for each witness to give evidence;

(j) any other matter the Tribunal considers relevant.

162. 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 should indicate in the case heading, immediately above the case number, that the proceeding is in the FTS.

163. Consultation with other parties

A party seeking to place a proceeding in the FTS must have regard to the objects and criteria of the FTS.

164. Form of application to enter the Fast Track Stream

(1) A party to a proceeding may, by application for directions in the approved form P05, 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 on each party to the proceeding.

(3) An application for directions filed under sub-rule (1) must set out why the proceeding should be placed in, or removed from, the FTS.

(4) An application for directions filed under sub-rule (1) is not required to be supported by an affidavit but the Tribunal may, on application by another party or of its own motion, require that an affidavit be filed.

165. Preliminary hearing

Issues which may be considered at a pre-hearing conference in a FTS matter include, but are not limited to:

(a) the likelihood of settlement occurring without a hearing;

(b) identification of the issues in dispute;

(c) what directions and orders should be made;

(d) when the matter should be heard;

(e) if oral evidence will be given, which expert and non-expert witnesses will give oral evidence, how long that will take, and whether a witness is required to attend in person or provide evidence in some other way.

166. Interlocutory applications

(1) Before making an interlocutory application in a FTS proceeding, a party is required to endeavour to resolve the issue by agreement.

(2) An interlocutory application in a FTS proceeding is to identify concisely, but with sufficient detail, the orders sought and the grounds relied on.

(3) A supporting affidavit is not to be filed with an interlocutory application but may be ordered if the Tribunal considers it necessary.

167. Interlocutory hearings

Interlocutory applications and arguments in the FTS will be conducted informally and may be conducted by teleconference or videoconference.

168. Conduct of hearings

(1) Parties to a FTS proceeding, and their representatives, have a duty to the Tribunal to take all reasonable steps to ensure that hearings proceed as expeditiously and efficiently as possible.

(2) A Presidential member hearing a FTS proceeding may have the parties identify the issues in dispute, the evidence relevant to the issues in dispute and the parties' respective contentions.

(3) A Presidential member hearing a FTS proceeding may give directions about the:

(a) issues on which the Tribunal requires evidence;

(b) nature of the evidence required to decide those issues;

(c) way in which evidence is to be placed before the Tribunal;

(d) 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 which party is calling the witness;

(c) enquire into and determine what are the issues 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 by teleconference or videoconference;

(h) determine whether submissions are made orally or in writing.

169. Non-expert evidence

The Tribunal will determine the extent of evidence and the way in which evidence given in FTS proceedings, including by reference to rule 111, if appropriate.

170. Reasons for decision

The content of reasons for a decision in a FTS proceeding will depend on the complexity of the issues in dispute.

171. Hearing loss

Subject to contrary order of a Presidential member, a proceeding concerning a claim for noise induced hearing loss will proceed in the FTS.

J. Inactive Matters List

172. Eligibility of a proceeding to be treated as an inactive matter

A proceeding under the *Return to Work Act 2014* may be placed in a list of inactive matters (Inactive Matters List) if a Presidential member is satisfied that the proceeding is not able to be progressed for any of the following reasons:

(a) the applicant is unable to progress the proceeding by reason of illness, infirmity, absence from Australia or other good reason;

(b) a party to the proceeding is not able to obtain evidence from a witness, or potential witness, or arrange for a witness to attend a hearing for a period of not less than 3 months;

(c) surgery is required by a worker which will not take place for a period of at least 3 months and having the surgery, or the opinion of a medical expert or experts following the surgery, is material to the proceeding;

(d) the proceeding is a permanent impairment matter and the injury has not stabilised as defined in section 4(18) of the *Return to Work Act 2014*;

(e) other good reason why a proceeding cannot be progressed for a period of not less than 3 months.

173. Removal of a proceeding from the Inactive Matters List

(1) If a Presidential member considers that a proceeding should not remain in the Inactive Matters List, the proceeding may be removed and directions given to expedite its resolution.

(2) A party may seek to have a proceeding removed from the Inactive Matters List by filing and serving an application for directions in the approved form P05 with a supporting affidavit which explains why it is appropriate to re-activate the proceeding.

PART 23 - South Australian Skills Act

174. Suspension under section 64

(1) Where an employer suspends an apprentice or trainee from employment under section 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 A74 with the Registry.

(2) If a matter is unable to be resolved by mediation at the Commission, the employer must refer it to the Tribunal under this rule within 3 business days of the conclusion of mediation by filing the approved form A75 with the Registry which states:

(a) the name, date of birth and the training contract identity number of the apprentice/trainee suspended and their 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.

175. Disputes and grievances

(1) An application under section 65 of the *South Australian Skills Act 2008* is to be made in the approved form A75.

(2) The parties to an application under sub-rule (1) must attend a compulsory conciliation conference conducted under section 43 of the SAET Act.

(3) If an applicant fails to attend a conference under sub-rule (2) or a subsequent hearing in person or by a representative, the Tribunal may dismiss the application if it is satisfied that reasonable notice of the conference and a reasonable opportunity to be heard were given to the applicant.

(4) Where an applicant files an application under sub-rule (1), and does not confirm their intention to proceed with it in response to any clarification sought by the Registrar or a Tribunal member within 10 days, the Registrar may deem that the application has been discontinued without further notice.

PART 24 - Work Health and Safety Act

176. Form of entry permit

A registrar will determine the form of a WHS entry permit as defined in section 4 of the *Work Health and Safety Act 2012*.

177. Register of entry permit holders

(1) For the purposes of section 151 of the *Work Health and Safety Act 2012*, a registrar will publish a register of entry permit holders on the Tribunal website.

(2) The register will contain the name of the permit holder and the union that an 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.

178. Application to revoke an entry permit and disputes about right of entry

(1) Applications under section 138 of the *Work Health and Safety Act 2012* to revoke an entry permit and proceedings under section 142 to deal with a dispute about a right of entry (including disputes under section 128 about whether a request about entry is reasonable), must be filed with the Registry in the approved form A53.

(2) As soon as practicable after filing an application under sub-rule (1), the applicant must provide a copy to the other parties nominated on the application form or their representatives.

(3) The President will assign applications under sub-rule (1) to a Tribunal member.

(4) Practice Directions may be issued to outline the steps to be taken and procedures to be adopted in a right of entry dispute.

179. Surrender of entry permits

(1) The person to whom an 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;

(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.

180. Work health and safety disputes

(1) Terms defined in Part 5, Division 7A of the *Work Health and Safety Act 2012* have that meaning in this Part.

(2) Written notice of a dispute about a WHS matter given to the Tribunal under s 102B(2) of the *Work Health and Safety Act 2012* must be in the approved form A54.

(3) Written notice given under sub-rule (2) must be served by the applicant on all named parties to the dispute.

(4) The Tribunal may direct that written notice given under sub-rule (2) be served on a person or body that is not a party to the dispute.

(5) On receipt of written notice given under sub-rule (2) the Tribunal may deal with the dispute as thought appropriate, including by conciliation, mediation, or arbitration, and may make any order necessary to achieve prompt resolution of the dispute.

(6) The Tribunal website is prescribed for the purpose of s 102B(4) of the *Work Health and Safety Act 2012*.

181. Probationary declarations

(1) An application for a probationary declaration under section 143A of the *Work Health and Safety Act 2012* must be made in an approved form.

(2) An application made under sub-rule (1) will be referred to a Presidential member and will be conducted as considered appropriate after hearing from all affected parties.

PART 25 - Industrial referral agreements

182. 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.

183. Form and filing of a Referral Agreement

Parties may file a copy of a referral agreement with the Registry along with a written request that the document be received as a referral agreement between the parties for the period of its duration.

184. 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.

185. Conduct of dispute resolution

(1) Subject to any term to the contrary in a 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) information or documents provided during the course of 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 in dispute, a memorandum of the terms of settlement or partial settlement will be drafted by the parties.

(3) A memorandum under sub-rule (2) may be filed with the Registry or may remain confidential and between the parties.

186. Notices to parties

(1) If a Tribunal member dealing with a request for assistance takes the view that no action should be taken or that action should be suspended or discontinued, before making a determination to that effect the Tribunal member will:

(a) advise the parties in writing of their view; and

(b) provide the parties with a reasonable opportunity to be heard by oral or written submissions on the issue.

(2) After receiving any submissions made under sub-rule (1), the parties will be provided with a written determination setting out the reasons.

PART 26 - Applications for internal review - section 66 SAET Act

187. Internal review of a decision of the Tribunal

(1) To seek internal review of a Tribunal decision under section 66 of the SAET Act, an application for internal review in the approved form A95 which satisfies section 66 and sub-rules (2) and (3) must be filed within 1 month of the decision to which the application relates.

(2) An application made under sub-rule (1) must attach a copy of the decision under review and any other relevant document, set out the grounds of review and identify which parts of the decision are complained of.

(3) If a stay of the operation of a decision being reviewed is sought, the application for internal review should make that clear and explain why a stay should be ordered.

PART 27 - Appeals

188. Application of Part

This Part applies to an appeal to the Full Bench of the Court brought under section 67 of the SAET Act.

189. Procedure for appeals

(1) An appellant must file and serve a Notice of Appeal in the approved form A96 within 28 days of the date of the orders appealed from unless a relevant Act or a rule in the Rules concerning a relevant Act provides otherwise.

(2) A Notice of Appeal must be certified as having been settled by counsel, or where an appellant is not legally represented, by the appellant.

(3) 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 Notice of Appeal.

(4) Not less than 35 days before an appeal is heard, the appellant shall file with the Registry copies of one Appeal Book for each Presidential member and serve a copy of the Appeal Book on each respondent.

(5) Not less than 28 days before an appeal is to be heard an appellant shall file with the Registry and serve on all other parties a summary of the appellant's argument.

(6) Not less than 21 days before an appeal is to be heard, any other party who supports the position of the appellant shall file with the Registry and serve on all other parties a summary of that party's argument.

(7) Not less than 14 days before an appeal is to be heard, each respondent to the appeal shall file with the Registry and serve on all other parties a summary of its argument.

(8) Not less than 7 days before an appeal is to be heard, any other party who supports the position of a respondent shall file with the Registry and serve on all other parties a summary of the party's argument.

(9) Not less than 21 days before an Appeal Book is filed the appellant is to file with the Registry and serve on all other parties a proposed index to the Appeal Book.

(10) Not less than 3 working days before an appeal is to be heard, each respondent is to file copies of any additional transcript or exhibits (if any) on which it relies, and to serve a copy on the appellant and any other respondent(s).

(11) 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 the Rules provide otherwise.

190. Service and content of Appeal Books

(1) An Appeal Book shall contain copies of:

(a) the Notice of Appeal;

(b) the decision appealed from;

(c) relevant portions of the transcript of evidence and relevant exhibits; and

(d) any other document or material admitted into evidence and relevant to the appeal grounds, cross appeal grounds or Notice of Alternate Contentions.

(2) Appeal Books must:

(a) have a title page;

(b) be indexed and paginated;

(c) use both sides of good quality A4 sized bond paper;

(d) be clear and legible; and

(e) be bound by spiral binding not staples or bulldog clips, and not in folders.

(3) The index to an Appeal Book is to:

(a) be located immediately after the title page;

(b) contain columns which show the item number of the document, a short description of the document, the date of the document and the page number the document appears at;

(c) describe the exhibit or MFI number of any document, including exhibits to affidavits; and

(d) number documents consecutively in the item number column.

(4) To control the size of Appeal Books, parties should as far as practicable:

(a) exclude all documents or parts of documents 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.

(5) Practice Directions may be issued from time to time in relation to requirements for the lodgement and contents of Appeal Books.

191. Form and content of a summary of argument

(1) A summary of argument is to be as brief as possible and, without prior permission of the Tribunal, is not to exceed 10 A4 pages.

(2) A summary of argument must:

(a) contain a summary of facts in the decision under appeal;

(b) identify and summarise the errors complained of by reference to the grounds of appeal;

(c) outline the steps in the reasoning of the argument presented on each issue;

(d) contain a succinct statement of each contention 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 not being pursued.

(3) Except where 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 on, but instead should be a guide to these materials.

(4) A summary of argument must include any citations from cases or other authority relied on, including details of particular paragraphs or pages to which reference is made.

192. Statements of Issues and Contentions in appeals

(1) Prior to an appeal being heard a Presidential member may order that a party file and serve a Statement of Issues and Contentions (SOIC).

(2) A SOIC will usually be ordered in relation to an appeal where a party or parties are not represented or where there is ambiguity or disagreement about the issues.

(3) An order made under this rule may adopt rule 112.

193. 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 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 references to the reasons for decision, evidence, legislation or authority;

(b) in respect of each proposition of law challenged, identify the proposition challenged, state why it is erroneous, provide a correct statement of law and cite any authority relied on in support; and

(c) to the extent that reasoning is challenged, explain why the reasoning is erroneous and state what the reasoning should be.

(4) Written submissions should not, other than in exceptional circumstances, set out passages from the reasons for judgment, evidence, legislation or authorities but rather identify or make reference to them.

194. 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 party in default.

PART 28 - Rules relating to the use of interpreters

A. Interpreters generally

195. Main purposes

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, mediations, 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.

196. 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.

197. 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 a proceeding.

198. Proceedings to be conducted in English

Subject to this Part, proceedings in the Tribunal are to be conducted in English.

199. 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 that:

(a) the use of an interpreter is required;

(b) the language and dialect to be interpreted; and

(c) 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 English sufficiently to enable them to understand and participate in the proceeding, the party may be permitted to use an interpreter who meets the standards and requirements set out in this Part to communicate with the Registry (but for no other purpose).

200. Persons 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;

(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, the Tribunal may allow a person to act or continue to act as an interpreter despite them not complying with all the requirements in sub-rules (1), (2) and (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 satisfactory level 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 18 years.

201. 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.

202. 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 deposing that:

(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 the witness:

(i) understood the interpreter; and

(ii) agreed with the contents of the affidavit or statement; and swore or affirmed the affidavit or signed the statement in the presence of the interpreter.

(2) Unless the Tribunal otherwise orders, an interpreter who sight translates an affidavit or statement of a witness as described in sub-rule (1) may, but is not required to, interpret the evidence of the witness in any hearing of the proceeding.

(3) The Tribunal may at any time, of its own motion or on the application of a party, request that an interpreter correct, clarify, qualify or explain their interpretation of evidence or sight translation of a document.

203. 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.

B. Code of conduct for interpreters

204. 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.

205. Compliance with the code of conduct for interpreters

(1) An interpreter must comply with the Code.

(2) Unless the otherwise ordered, an interpreter is to have read the Code before interpreting in a Tribunal proceeding.

(3) Unless otherwise ordered, 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) This rule is subject to rule 197.

206. 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 documents shown to the witness, whether before or during the course of the witness' statement in the course of a conference or evidence at a hearing.

(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.

207. Duty to comply with directions

An interpreter must comply with any directions made by the Tribunal.

208. Duty of accuracy

(1) An interpreter must at all times during a proceeding use 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 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 evidence is being given in a hearing, immediately inform the Tribunal and provide the necessary correction, qualification or explanation to the presiding Tribunal member; and

(c) if in a conference, mediation or directions hearing, immediately inform the presiding Tribunal member and provide the necessary correction, qualification or explanation to the presiding Tribunal member.

209. Duty of impartiality

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.

210. Interpreters are not to assist a party or person involved in proceedings

(1) 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.

(2) 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.

211. 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.

212. 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 29 - Contempt of the Tribunal

213. Contempt committed in the face of the Tribunal

(1) If a contempt is committed in the face of the Tribunal and needs to be dealt with urgently, 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.

214. 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 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.

215. 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 may apply to the Tribunal to have the Accused charged with contempt.

(2) An application under sub-rule (1) must:

(a) be made as an interlocutory application supported by affidavit; and

(b) 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 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.

216. 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 prosecuting of a charge of contempt and may retain solicitors and counsel for that purpose.

(3) In relation to proceedings for contempt initiated by an application made under rule 215(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 217(4).

(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.

217. Punishment of contempt

(1) This rule applies to the Tribunal sitting as the Court.

(2) The Tribunal may punish a contempt by a fine or imprisonment or both.

(3) If the Tribunal imposes a fine, it may fix:

(a) the time for payment of the fine; and

(b) a term of imprisonment in default of payment of the fine.

(4) The Tribunal may order a person who has been found guilty of a contempt to pay the costs of the contempt proceedings.

(5) The Tribunal may release a person who has been found guilty of a contempt on the person entering into an undertaking to observe conditions determined by the Tribunal.

(6) The Tribunal may, on its own initiative or on application by an interested person, cancel or reduce a penalty imposed for a contempt.

(7) An order for the imposition of a penalty for a contempt, or for the cancellation of a penalty imposed for a contempt may be:

(a) made on conditions the Tribunal considers appropriate; and

(b) suspended on conditions the Tribunal considers appropriate.

(8) 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 (5) 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.

(9) If directed to do so by the Tribunal, the Registrar must give effect to an order made or warrant issued under sub-rule (8).

PART 30 - Miscellaneous

218. Transfer of proceedings

An application to transfer a proceeding to another tribunal or court under section 83A(1) of the SAET Act must be made by filing an application for directions in the approved form P05 and a supporting affidavit which explains why it is more appropriate or expeditious that the matter be dealt with by that tribunal or court.

219. Notice of hearing

Before an application is heard, a registrar must give notice of the time and place of the hearing to the applicant and any other party who has been served with the application.

220. Location of hearing

(1) If a party wishes a proceeding, or part of a proceeding, to be heard at a place other than the Tribunal's principal location in Adelaide, an application to have a hearing in a specified place should be made and reasons given for the request.

(2) An application made under sub-rule (1) will be determined by the Tribunal member who is to hear the proceeding.

221. Provision of consent orders

(1) For the purposes of this rule, settlement occurs in a proceeding when all parties agree they are bound by the terms which resolve the issues in dispute.

(2) Parties are to advise the Tribunal in writing within 7 days of settlement occurring in a proceeding.

(3) A Commissioner or Presidential member may record when settlement is reached and may require the parties to set out the terms of settlement orally or in writing.

(4) The Tribunal may cancel any conference, attendance or hearing scheduled in a proceeding after settlement has been reached.

(5) Subject to contrary order, draft consent orders in the approved form P33 along with evidence of consent by all parties are to be provided within 28 days of settlement.

(6) For the purposes of this rule, in a proceeding where an order for costs can be made, agreement about whether a party is entitled to receive costs or pay costs is required before settlement occurs, but agreement of the amount payable to or by any party is not required for settlement to occur.

222. Procedure for identifying and dealing with a summary proceeding

(1) Subject to the SAET Act, any relevant Act, the Rules and any Practice Direction, a Presidential member may direct that a proceeding, or a type or class of proceeding 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 a Presidential member directs.

(3) A summary proceeding may be heard with little or no delay.

(4) Without limiting the ambit of a direction which may be made in relation to a summary proceeding, the Tribunal may direct that:

(a) a hearing proceed based on available documentary evidence only;

(b) the evidence of any witness be reduced to writing;

(c) some or all witnesses not be required for cross-examination;

(d) the parties agree the facts, or some of them;

(e) the parties reduce their contentions, and the factual and legal findings they say should be made, to writing.

(f) the time for each party to present its case be limited to a specified time.

223. Disrupting Tribunal proceedings

(1) If a Tribunal member considers that a person may have committed a contempt of the Tribunal as defined in section 91(1) of the SAET Act, a referral may be made to the President or a Presidential member to whom the President has delegated the power to deal with the contempt.

(2) A Presidential member who receives a referral under sub-rule (1) will consider what action should be taken, including whether a charge of contempt should be laid against the person who has potentially committed a contempt.

(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 a proceeding or order that the proceeding continue subject to terms and conditions.

224. Application to attend an examination by a health practitioner

(1) Subject to this rule, in any proceeding 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 an 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 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 travel and/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 on application by another party, stay the proceedings or make such other order or direction as is appropriate.

225. Former Commissioners appearing in the Tribunal

(1) A legal practitioner who is a former Commissioner is not permitted to accept or retain a brief or instructions to appear in the Tribunal in the jurisdiction(s) to which they were previously assigned for a period of 2 years after ceasing to be a Commissioner.

(2) Sub-rule (1) does not apply to a legal practitioner who was a Commissioner for one year or less.

226. 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 proceeding, whether electronically or in paper form;

(c) the use of an interpreter in a proceeding;

(d) undertaking a search of any record held by the Tribunal;

(e) copying documents;

(f) summonsing any document, person or thing.

(2) A registrar may direct that the whole or any part of fees otherwise payable under this rule will not be charged in a proceeding or, if charged and paid, be returned.

227. Paying money into the Tribunal

(1) 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 SAET Fund either:

(a) by order of a Presidential member; or

(b) on the direction of the Registrar.

(3) The SAET Fund and any income it produces are to be invested by the Registrar as a common fund under section 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 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.

228. Review of exercise of administrative power by a registrar – section 72 SAET Act

(1) An application for review of the exercise of an administrative power by a registrar in relation to a proceeding before the Tribunal must be filed within 14 days of the administrative power being exercised.

(2) An application under sub-rule (1) must be made in the approved form A94, set out the grounds of review and describe the relief sought.

(3) A Tribunal member may make orders in relation to whether any party or non-party to a proceeding is served with an application brought under this rule.

229. Delegation

(1) With the permission of the President, the Registrar may delegate to a member of the staff of the Tribunal a function of a registrar under the Rules.

(2) A delegation under sub-rule (1):

(a) must be in writing; and

(b) may be conditional; and

(c) must not derogate from the ability of the Registrar to act in any matter; and

is revocable at will by the Registrar.

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 No. 1 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)	28 November 2024
South Australian Employment Tribunal Rules 2022	Amendment No. 1 SA Government Gazette: 21 August 2024 (No. 58, page 2519)	28 November 2024
South Australian Employment Tribunal Rules 2024	28 November 2024 SA Government Gazette: 28 November 2024 (No. 77, page 4359)	