

## Article Information

Author: David Ey

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# You'll have to say it at the SAET: Expansion of the role of the South Australian Employment Tribunal

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**Emily Haar, Associate,** and **Irene Nikoloudakis, Law Clerk,** delve into the changes.

### Jurisdictional Changes

The SAET commenced in July 2015 to deal with workers' compensation disputes under the *Return to Work Act 2014* (SA), replacing the Workers Compensation Tribunal of South Australia. The SAET was established on the premise that the collective industrial relations skills and experience of its members would be utilised in the future for resolving a broader spectrum of employment-related disputes. In essence, the aim was for the SAET to be a 'one-stop-shop' for resolving disputes between employers and employees in South Australia.

On 1 July 2017, the Equal Opportunity Tribunal, Industrial Relations Court and the Industrial Relations Commission were abolished and the SAET's jurisdiction was expanded. The SAET can now hear not only workers' compensation disputes but can also:

- determine South Australian employment and industrial disputes;
- regulate South Australian industrial awards, enterprise agreements and registered employer and employee organisations;
- hear South Australian work health and safety-related prosecutions;
- resolve equal opportunity matters; and
- determine dust disease matters.

The SAET now hears matters that were previously heard in the following Courts and Tribunals:

- Industrial Relations Court and Commission;
- District Court in regards to the Dust Diseases Act;
- Criminal jurisdiction of Magistrates Court in respect of 'industrial offences' (work health and safety prosecutions);
- Magistrates, District and Supreme Courts in regards to Common law employment contract disputes and damages under the *Return to Work Act 2014* (SA);
- Teachers Appeal Board and Classification Review;
- Equal Opportunity Tribunal;
- Police Review Tribunal (termination and transfer matters only); and
- Public Sector Grievance Review Commission.

For constitutional reasons, a part of the SAET that is the Tribunal in Court Session has also been established, which is referred to as the South Australian Employment Court. The South Australian Employment Court undertakes functions that were previously dealt with by the Industrial Relations Court, such as hearing monetary claims arising under enterprise

agreements, industrial awards and employment contracts, including where empowered to do so under the provisions of the Federal Fair Work Act 2009 (Cth).

### **Who leads the SAET?**

The SAET is led by a President (presently Justice McCusker, a judge of the District Court), who is supported by a number of Deputy Presidents, Commissioners and Supplementary Panel Members.

### **Procedural Changes**

The SAET has an emphasis on alternative dispute resolution. In particular, the SAET members can, at any time, require parties to a proceeding to attend a compulsory conciliation conference. SAET members can also refer matters in dispute for mediation at any time, and this referral may be made with or without the consent of the parties. The purposes of both the compulsory conference and mediation are to promote the resolution of disputes by settlement and to identify, refine and narrow the issues in the proceedings.

Another aspect of the new SAET is that it will be to take a 'hands on' approach in gathering evidence to resolve disputes, rather than simply relying on the parties of the proceedings to present the evidence. For example, a member of the SAET, or any other person authorised by the SAET, can enter land or buildings and carry out an inspection that the SAET considers relevant to the proceedings. The SAET also has the discretion to refer any questions arising in the proceedings for investigation and report to any expert in the relevant field. Further, the SAET can, on its own initiative, issue a summons (a legal notice) requiring a person to appear before the SAET and give evidence.

### **Appeals**

Appeals against a decision of the SAET, other than a decision of the Full Bench, will be heard by the Full Bench of the South Australian Employment Court. However, appeals on questions of law against a decision of the Full Bench of the SAET, including a Full Bench of the South Australian Employment Court, will be heard by the Full Court of the Supreme Court. Internal reviews are also available for SAET decisions made without a Presidential member.

### **Practical Implications**

The expansion of the SAET's jurisdiction is designed to avoid delays caused by parties being required to argue cases with the same set of facts in more than one tribunal.

The SAET has published a new range of forms, and is governed by a new set of Rules and Practice Directions, which employers will need to be mindful of when dealing with matters before the SAET, including approvals of South Australian State Government and Local Government enterprise agreements.

Should you have any questions concerning the new jurisdiction of the SAET, please contact a member of Piper Alderman's Employment Relations Team