

South Australia

# South Australian Employment Tribunal Regulations 2015

under the *South Australian Employment Tribunal Act 2014*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *South Australian Employment Tribunal Regulations 2015*.

### 3—Interpretation

In these regulations—

*Act* means the *South Australian Employment Tribunal Act 2014*.

### 4—Meaning of decision of the Tribunal

For the purposes of the definition of *decision* in section 3(1) of the Act, a decision of the Tribunal does not include the following interlocutory directions, determinations or orders in respect of the operation of Part 5 of the Act:

- (a) the adjournment of proceedings by the Tribunal or the refusal of the Tribunal to adjourn proceedings (including without limitation, such an order in respect of a conference under section 43 of the Act);
- (b) a direction of the Tribunal under section 38 of the Act;
- (c) a direction of the Tribunal under section 55(2)(e), (f), (g) or (i) of the Act;
- (d) a determination of the Tribunal under section 62(1) or (2) of the Act.

## **5—Provision of reasons for decision or other documents or things by decision-maker**

For the purposes of section 28(2) of the Act, the time prescribed for the provision of a written statement of reasons or other relevant document or thing referred to in that section is 21 days from the time the decision-maker receives notice that an application has been made to the Tribunal for a review of the decision-maker's decision.

## **6—Service**

- (1) For the purposes of section 84(3) of the Act, the Tribunal may order that a process, notice or other document required or authorised to be given to or served on a person relating to any proceedings before the Tribunal may—
  - (a) be given to the person personally; or
  - (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
  - (c) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
  - (d) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.
- (2) If a person refuses to accept personal service of a notice or other document required or authorised to be served on the person under the Act, or a relevant Act for the purpose of proceedings before the Tribunal, the notice or document will be taken to have been served personally on the person if the person serving the notice or document—
  - (a) puts it down in the person's presence; and
  - (b) tells the person what the notice or document is.
- (3) It is not necessary to show the original of the notice or document to the person being served.

## **7—Enforcement of monetary orders**

- (1) A party to proceedings is recognised for the purposes of section 86(1) of the Act.
- (2) Unless subregulation (1) would otherwise apply, in the case of a monetary order that is an order as to the payment of costs made by the Tribunal—the person in favour of whom the order is made is recognised for the purposes of section 86(1) of the Act.

## **8—Accessibility of evidence**

- (1) For the purposes of section 87(2)(d) of the Act, the following classes of material are prescribed:
  - (a) recordings of Tribunal proceedings in the form of an audio, video or other recording from which a visual image or sound can be produced;
  - (b) material concerning the personal affairs of a person, the general disclosure of which would be unreasonable;

- (c) material that contains allegations or suggestions of criminal or other improper conduct on the part of a person, the truth of which has not been established by judicial process and the general disclosure of which would be unreasonable;
  - (d) material that contains matter consisting of information—
    - (i) concerning a person under the age of 18 years, or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age when the information was furnished; and
    - (ii) the general disclosure of which would be unreasonable having regard to the need to protect that person's welfare;
  - (e) material that contains matter consisting of information—
    - (i) concerning a person suffering from a mental illness, impairment or infirmity or concerning such a person's family or circumstances, or any information of any kind furnished by a person suffering from mental illness, impairment or infirmity when the information was furnished; and
    - (ii) the general disclosure of which would be unreasonable having regard to the need to protect that person's welfare.
- (2) In this regulation—
- personal affairs* of a person includes the person's—
- (a) financial affairs;
  - (b) criminal records;
  - (c) marital or other personal relationships;
  - (d) employment records;
  - (e) personal qualities, attributes or health status.

## 9—Annual report

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

- (a) information relating to each category of reviewable decision considered by the Tribunal under the *Return to Work Act 2014* (according to the section of the *Return to Work Act 2014* under which the original decision was made) as follows:
  - (i) the number of applications considered by the Tribunal for each category of decision;
  - (ii) the proportion of the total number of disputes considered by the Tribunal under Part 6 of the *Return to Work Act 2014* that each category of decision represents;
  - (iia) the number of matters subject to a pre-hearing conference under section 45 of the Act for each category of decision;
  - (iib) the number of matters proceeding to a full hearing before the Tribunal for each category of decision;

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

#### **9A—Modification of powers under Part 6 of *District Court Act 1991***

Pursuant to section 26B of the Act, the South Australian Employment Court may not exercise a power under Part 6 of the *District Court Act 1991* to award costs in proceedings relating to the exercise of its civil jurisdiction under section 112 of the *Work Health and Safety Act 2012*.

#### **10—Fees**

- (1) The following fees are payable to the South Australian Employment Court:
  - (a) in relation to the exercise of any designated civil jurisdiction—
    - (i) if a fee would be payable in relation to proceedings in the civil jurisdiction of the Magistrates Court for any step, item or matter if it occurred or arose in the Magistrates Court rather than the South Australian Employment Court, the same fee will be payable to the South Australian Employment Court in the exercise of the designated civil jurisdiction; or
    - (ii) if a fee would be payable in relation to proceedings in the civil jurisdiction of the District Court for any step, item or matter if it occurred or arose in the District Court rather than the South Australian Employment Court, the same fee will be payable to the South Australian Employment Court in the exercise of the designated civil jurisdiction;

- (b) in relation to the exercise of any designated criminal jurisdiction—if a fee would be payable in relation to proceedings in the Criminal Jurisdiction of the Magistrates Court for any step, item or matter if it occurred or arose in the Magistrates Court rather than in the South Australian Employment Court, the same fee will be payable to the South Australian Employment Court in the exercise of the designated criminal jurisdiction.
- (1a) Despite subregulation (1)(a), no fee is payable by the following parties to proceedings in any designated civil jurisdiction in the following circumstances:
- (a) the party is a small business employer for the purposes of section 23 of the *Fair Work Act 2009* of the Commonwealth;
  - (b) the party—
    - (i) is or was an employee whose earnings in the employment to which the proceedings relate do not exceed the amount set by section 5(15)(c) of the *Return to Work Act 2014*; or
    - (ii) is a person entitled to make a claim in respect of an employee whose earnings in the employment to which the proceedings relate do not exceed the amount set by section 5(15)(c) of the *Return to Work Act 2014*.
- (1b) The Registrar may, on the grounds of financial hardship, or if the Registrar considers it is fair and appropriate to do so in the circumstances of a particular case—
- (a) waive, remit or refund a fee (or part of a fee) payable by a person; or
  - (b) postpone payment of a fee (or part of a fee) by a person until such time, and upon such conditions (if any), as the Registrar thinks fit.
- (2) In this regulation—
- designated civil jurisdiction*** means the jurisdiction of the South Australian Employment Court under any of the following:
- (a) the *Dust Diseases Act 2005*;
  - (b) section 10 of the *Fair Work Act 1994*;
  - (c) Part 5 of the *Return to Work Act 2014*;
- designated criminal jurisdiction*** means the criminal jurisdiction of the South Australian Employment Court under the *South Australian Employment Tribunal Act 2014* or under any other Act.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2015	177	<i>Gazette 25.6.2015 p3087</i>	1.7.2015: r 2
2017	54	<i>Gazette 16.5.2017 p1287</i>	1.7.2017: r 2
<b>2018</b>	<b>21</b>	<b><i>Gazette 6.2.2018 p628</i></b>	<b>6.2.2018: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2017</i>
r 7		
r 7(1)	varied by 54/2017 r 4	1.7.2017
r 9	varied by 54/2017 rr 5(1)—(4)	1.7.2017
<b>r 9A</b>	<b>inserted by 21/2018 r 4</b>	<b>6.2.2018</b>
r 10	inserted by 54/2017 r 6	1.7.2017
<b>r 10(1)</b>	<b>varied by 21/2018 r 5(1)</b>	<b>6.2.2018</b>
<b>r 10(1a) and (1b)</b>	<b>inserted by 21/2018 r 5(2)</b>	<b>6.2.2018</b>

### Historical versions

1.7.2017