South Australia

South Australian Employment Tribunal Act 2014

An Act to establish a tribunal with jurisdiction to review certain decisions relating to rights or circumstances arising out of or in the course of employment; to confer powers on the tribunal; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *South Australian Employment Tribunal Act 2014*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

appear, at a hearing, means to appear in person or participate in a way allowed under this Act or a relevant Act;

applicant means the person who—

(a) brings a matter before the Tribunal; or

(b) requests, requires, or otherwise seeks that a matter be referred to, or otherwise brought before, the Tribunal,

except to the extent that the regulations or the rules otherwise provide;

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

decision, of a person or body (other than the Tribunal) under an Act includes a direction, determination or order of that person or body;

decision, of the Tribunal, includes a direction, determination or order of the Tribunal but, in prescribed circumstances, does not include an interlocutory direction, determination or order;

decision-maker—see section 27(2);

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

Deputy President means a Deputy President of the Tribunal;

District Court means the District Court of South Australia;

evidentiary material includes any document, object or substance of evidentiary value in proceedings before the Tribunal and includes any other document, object or substance that should, in the opinion of the Tribunal, be produced for the purpose of enabling the Tribunal to determine whether or not it has evidentiary value;

legally qualified member means—

(a) a Presidential member; or

(b) a magistrate who is a member of the Tribunal; or

(c) another member of the Tribunal who is a legal practitioner of at least 5 years standing;

Magistrates Court means the Magistrates Court of South Australia;

monetary order means an order of the Tribunal requiring the payment of money and includes—

(a) an order made for the payment of a fine or other pecuniary penalty; and

(b) an order as to the payment of any costs; and

(c) an order for the payment of compensation for breach of an Act;

President means the President of the Tribunal;

Presidential member means the President or a Deputy President of the Tribunal;

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

relevant Act means an Act (including this Act) which confers jurisdiction on the Tribunal;

rules means the rules of the Tribunal in force under this Act;

Tribunal means the South Australian Employment Tribunal established by this Act (including, if the context so permits, the Tribunal in Court Session—see section 5).

(2) If under a relevant Act a person's failure or omission to do something is reviewable under this Act as a decision—

(a) this Act applies as if that person had made that decision; and

(b) any provision of the relevant Act as to when the decision is taken to have been made has effect.

(3) The members of the staff of the Tribunal are—

(a) the registrars; and

(b) the other members of staff appointed or made available for the purposes of the Tribunal under this Act.

(4) The officers of the Tribunal are—

(a) the registrars; and

(b) members of the staff of the Tribunal who are designated as officers of the Tribunal by the Registrar of the Tribunal; and

(c) other persons who are designated as officers of the Tribunal under this Act.

4—Relevant Acts prevail

(1) Subject to section 6AB, if there is an inconsistency between this Act and a relevant Act, the relevant Act prevails to the extent of the inconsistency.

(2) Subsection (1) does not apply in relation to a rule made under section 92(1)(ka).

Part 2—South Australian Employment Tribunal

Division 1—Establishment of Tribunal

5—Establishment of Tribunal

(1) The *South Australian Employment Tribunal* is established.

(2) The Tribunal will have a part that is the Tribunal in Court Session and, as so established by force of this Act, is a court of record.

(3) The Tribunal in Court Session is to be the *South Australian Employment Court*.

(4) The Tribunal will also have a part that is the Tribunal acting as an industrial relations commission.

6—Jurisdiction of Tribunal

(1) Subject to this or any other Act, the Tribunal will have the jurisdiction (including the jurisdiction to try a charge for an offence) conferred on it by or under this or any other Act.

(2) Matters within the jurisdiction of the Tribunal will be assigned to the South Australian Employment Court as follows:

(a) an Act conferring jurisdiction on the Tribunal may specifically assign matters to the South Australian Employment Court;

(b) the rules may (unless to do so is inconsistent with a provision of a relevant Act) assign matters to the South Australian Employment Court;

(c) the jurisdiction to try a charge for an offence is assigned to the South Australian Employment Court.

(2a) If a matter is assigned to the South Australian Employment Court, the Court may direct, or an Act or the rules may provide, that the matter be the subject of a compulsory conference (within the meaning of section 43) in the part of the Tribunal that is acting as an industrial relations commission.

(3) Matters within the jurisdiction of the Tribunal (and not assigned to the South Australian Employment Court) and dealt with by the Tribunal acting as an industrial relations commission do not need to be specifically assigned to such a commission.

Note—

The Tribunal will also have any jurisdiction conferred on it under a law of the Commonwealth (and in such a case the procedural provisions of this Act will apply in relation to the conferred jurisdiction except to the extent such provisions are excluded by, or are otherwise inconsistent with, the Commonwealth law).

6A—Conferral of jurisdiction—criminal matters

(1) Subject to this section, the criminal jurisdiction of the South Australian Employment Court does not include jurisdiction in respect of major indictable offences.

(2) In addition to any jurisdiction conferred by or under another Act, the regulations may confer on the South Australian Employment Court jurisdiction in respect of a summary or minor indictable offence against a specified Act or statutory provision.

(3) If jurisdiction is conferred on the South Australian Employment Court under this or any other Act in respect of a summary or minor indictable offence, any proceedings for the offence must be commenced in the Court.

(4) The South Australian Employment Court will deal with a charge of a summary or minor indictable offence in the same way as the Magistrates Court deals with such a charge (and in accordance with the procedures that would apply if the Magistrates Court were dealing with such a charge) and the *Summary Procedure Act 1921* (including the provisions of that Act allowing an award of costs for or against a party to criminal proceedings) applies to the South Australian Employment Court subject to any exclusions or modifications prescribed by the regulations as if references to the Magistrates Court extended to the South Australian Employment Court.

(5) For the avoidance of doubt, if a person charged with a minor indictable offence elects, in accordance with the *Summary Procedure Act 1921*, for a trial in a superior court, the South Australian Employment Court must commit the defendant for trial by jury in the District Court.

(6) Where proceedings for a minor indictable offence are dealt with by a magistrate of the South Australian Employment Court—

(a) the magistrate cannot impose a fine that exceeds the maximum fixed by the relevant Act or $1 500 000 (whichever is the lesser); and

(b) the magistrate cannot impose a sentence of imprisonment that exceeds the maximum fixed by the relevant Act or 5 years (whichever is the lesser).

(7) If a magistrate of the South Australian Employment Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limit prescribed by subsection (6), the magistrate may remand the defendant to appear for sentence before a judge of the South Australian Employment Court.

(8) In the exercise of the criminal jurisdiction to which this section applies, summary proceedings will be heard by a Deputy President of the South Australian Employment Court who is also a magistrate unless the President determines that the proceedings should be heard by a judge of the Court.

6AB—Diversity proceedings

(1) Despite the provisions of this or any other Act, if—

(a) the determination of a matter that is within the jurisdiction of the Tribunal involves the exercise of federal diversity jurisdiction; or

(b) the determination of a matter would be within the jurisdiction of the Tribunal but for the fact that the exercise of the jurisdiction would involve the exercise of federal diversity jurisdiction,

then the jurisdiction must be exercised by the Tribunal sitting as the South Australian Employment Court.

(2) If, in proceedings before the Tribunal (other than the Tribunal sitting as the South Australian Employment Court), whether commenced before or after the commencement of this section, the Tribunal considers that the determination of the matter involves, or may involve, the exercise of federal diversity jurisdiction, the Tribunal must refer the proceedings to the South Australian Employment Court for determination.

(3) A proceeding—

(a) that is before the South Australian Employment Court in the exercise of jurisdiction under subsection (1); or

(b) referred to the South Australian Employment Court under subsection (2),

is a ***diversity proceeding***.

(4) If proceedings are referred to the South Australian Employment Court under subsection (2), the proceedings may be continued and completed, subject to the direction of the Court, as if steps taken in the proceedings prior to the referral had been taken in the Court.

(5) In respect of diversity proceedings under this section and despite anything to the contrary in a relevant Act—

(a) the South Australian Employment Court may not be constituted of supplementary panel members; and

(b) in the case of proceedings referred to the Court under subsection (2) that prior to the referral involved 1 or more supplementary panel members, the proceedings may be continued and completed in the absence of the panel members.

(6) The South Australian Employment Court may, if the Court is satisfied that the matter does not involve the exercise of federal diversity jurisdiction—

(a) remit the proceedings to the Tribunal as originally constituted; and

(b) make such orders that the Court considers appropriate to facilitate the determination of the proceedings.

(7) The South Australian Employment Court has, and may exercise, all of the jurisdiction, powers and functions in relation to diversity proceedings that the Tribunal (other than in Court Session) would have had if it could exercise federal diversity jurisdiction, including jurisdiction, powers and functions conferred or imposed on the Tribunal by or under this Act or a relevant Act.

(8) The practices and procedures under this Act (including the rules) or a relevant Act that apply to the Tribunal (other than in Court Session) will apply to the South Australian Employment Court in respect of diversity proceedings unless, and to such extent as, the Court determines otherwise.

(9) The amount specified in a purported monetary order made by the Tribunal may be recovered in the appropriate court (within the meaning of section 86) by the person in favour of whom the order was made as if it were a debt.

(10) A person who contravenes or fails to comply with the terms of a purported order of the Tribunal (other than a purported monetary order) is guilty of an offence.

Maximum penalty: $50 000 or imprisonment for 2 years.

(11) If a person seeks a variation or revocation of a purported order or purported monetary order, the person may apply to the South Australian Employment Court, and such a matter will be a diversity proceeding for the purposes of this section.

(12) No action undertaken, or purportedly undertaken, by a person pursuant to, or for the purposes of enforcing, a purported order or a purported monetary order, in good faith, gives rise to any liability against the person or the Crown.

(13) In this section, a reference to a ***purported order*** or a ***purported monetary order*** is a reference to an order purportedly made by the Tribunal other than in Court Session (whether before or after the commencement of this section) that is invalid because determination of the matter that gave rise to the order involved the exercise of federal diversity jurisdiction and that, on the commencement of this section, is to be made by the South Australian Employment Court.

(14) The provisions of this section prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or any other Act.

(15) In this section—

federal diversity jurisdiction means jurisdiction of the kind referred to in section 75(iii) or (iv) of the *Constitution of the Commonwealth*.

6B—Conferral of jurisdiction—related matters

(1) Without limiting any other provision, if a provision of an Act specifically enables an application to be made to the Tribunal, or a claim to be brought before the Tribunal, the Act will be taken to confer jurisdiction on the Tribunal to deal with the matter concerned.

(2) Without limiting any other provision, Divisions 6 and 7 provide for additional jurisdiction, powers and other matters relating to the conferral of jurisdiction on the Tribunal or the Tribunal in Court session.

7—Tribunal to operate throughout State

(1) The Tribunal is to facilitate access to its services throughout the State and may sit at any place (either within or outside the State).

(2) Registries of the Tribunal will be at the places determined by the President after consultation with the Minister.

7A—Seals

(1) The Tribunal will have such seals as are necessary for the transaction of its business.

(2) The Tribunal must have a seal for the South Australian Employment Court.

(3) A document apparently sealed with a seal of the Tribunal (including with respect to the South Australian Employment Court) will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Tribunal.

Division 2—Main objectives of Tribunal

8—Main objectives of Tribunal

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

(a) in the exercise of its jurisdiction, to promote the best principles of decision-making, including—

(i) independence in decision-making; and

(ii) natural justice and procedural fairness; and

(iii) high-quality, consistent decision-making; and

(iv) transparency and accountability in the exercise of statutory functions, powers and duties; and

(b) to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with special needs; and

(c) to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation and alternative dispute resolution procedures wherever appropriate; and

(d) to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and

(e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and

(f) to act with as little formality and technicality as possible, including by informing itself in such manner as the Tribunal thinks fit; and

(g) to be flexible in the way in which the Tribunal conducts its business and to adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

Division 3—Members of Tribunal

Subdivision 1—The members

9—The members

The members of the Tribunal are—

(a) the President; and

(b) the Deputy Presidents; and

(c) the magistrates who are designated as members of the Tribunal under this Act; and

(d) the Commissioners; and

(e) the supplementary panel members.

Subdivision 2—The President

10—Appointment of President

(1) The President of the Tribunal will be a judge of the District Court appointed by the Governor, by proclamation, to be the President of the Tribunal.

(2) The President of the Tribunal will, by virtue of holding that office, have the same rank, title, status and precedence as a judge of the Supreme Court.

(3) Furthermore, the appointment of a judge of the District Court as President of the Tribunal does not affect—

(a) the judge's tenure of office or status as a judge; or

(b) the payment of the judge's salary or allowances as a judge (subject to the operation of subsection (7)); or

(c) the ability of the person to do anything in the person's capacity as a judge (including as to the exercise of the jurisdiction of the District Court); or

(d) any other right or privilege that the judge has as a judge.

(4) Service in the office of President of the Tribunal is taken, for all purposes, to constitute service as a judge of the District Court.

(5) Subject to subsections (3) and (4), an appointment may be subject to conditions determined by the Governor.

(6) Without limiting subsection (5), the Remuneration Tribunal may determine that the President's salary or allowances as a judge will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).

(7) Any salary or allowances payable as an additional component of remuneration under subsection (6) cannot be reduced during the person's term of office as President.

(8) A person ceases to be the President of the Tribunal if—

(a) the person ceases to be a judge of the District Court; or

(b) the person, with the approval of the Governor, resigns as President by written notice to the Attorney-General; or

(c) the person dies.

(9) Nothing under subsection (8)(b) affects the person's tenure or status as a judge.

(10) Before the Governor makes a proclamation under this section, the Attorney-General must consult with the Chief Justice and the Chief Judge.

11—President's functions generally

(1) The President of the Tribunal has the functions conferred on the President under this Act or any other Act.

(2) The functions of the President include—

(a) participating as a member of the Tribunal; and

(b) having primary responsibility for the administration of the Tribunal; and

(c) managing the business of the Tribunal, including by ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it carries out its functions; and

(d) providing leadership and guidance to the Tribunal and engendering cohesiveness and collaboration amongst the members and staff of the Tribunal; and

(e) giving directions about the practices and procedures to be followed by the Tribunal; and

(f) developing and implementing performance standards and setting benchmarks for the Tribunal; and

(g) being responsible for promoting the training, education and professional development of members of the Tribunal; and

(h) overseeing the proper use of the resources of the Tribunal; and

(i) providing advice about—

(i) the membership of the Tribunal; and

(ii) the operations and activities of the Tribunal.

(3) The President may do all things necessary or convenient to be done in the performance of the President's functions.

(4) In the performance of the President's functions, the President is not subject to direction or control by the Minister.

12—Acting President

(1) If there is a vacancy in the office of President or the President is absent or for any other reason is unable to perform the functions of office, the Governor may, by proclamation, appoint a person to act as President of the Tribunal.

(2) The Governor may only appoint—

(a) a Deputy President; or

(b) a judge of the District Court,

to act as President.

(3) A person appointed to act as President—

(a) has all the functions of the President; and

(b) is taken to be the President for all purposes related to this Act or a relevant Act.

(4) A person appointed to act as President is, for the period of his or her appointment, entitled to be paid additional salary and allowances to ensure that his or her salary and allowances equal the salary and allowances payable to a President of the Tribunal.

(5) The Governor may, by further proclamation—

(a) extend or renew an appointment under this section; or

(b) revoke an appointment under this section.

(6) Until an appointment is made under subsection (1) (or unless such an appointment is made) the most senior Deputy President who is also a judge of the District Court will be taken to hold an appointment to act as the President of the Tribunal.

Subdivision 3—The Deputy Presidents

12A—Number of Deputy Presidents

There will be at least 2 Deputy Presidents of the Tribunal.

13—Appointment of Deputy Presidents

(1) A Deputy President will be—

(a) a judge of the District Court appointed by the Governor, by proclamation, to be a Deputy President of the Tribunal; or

(b) a magistrate appointed by the Governor, by proclamation, to be a Deputy President of the Tribunal.

(2) The appointment of a judge of the District Court as a Deputy President of the Tribunal under subsection (1)(a) does not affect—

(a) the judge's tenure of office or status as a judge; or

(b) the payment of the judge's salary or allowances as a judge (subject to the operation of subsection (5)); or

(c) the ability of the person to do anything in the person's capacity as a judge (including as to the exercise of the jurisdiction of the District Court); or

(d) any other right or privilege that the judge has as a judge of the District Court.

(3) Service in the office of Deputy President of the Tribunal by a judge of the District Court is taken, for all purposes, to constitute service as a judge of that Court.

(4) Subject to subsections (2) and (3), an appointment under subsection (1)(a) may be subject to conditions determined by the Governor.

(5) Without limiting subsection (4), in the case of an appointment under subsection (1)(a), the Remuneration Tribunal may determine that a Deputy President's salary or allowance as a judge will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).

(6) Any salary or allowances payable as an additional component of remuneration under subsection (5) cannot be reduced during the person's term of office as a Deputy President of the Tribunal.

(7) The appointment of a magistrate as a Deputy President of the Tribunal under subsection (1)(b) does not affect—

(a) the magistrate's tenure of office or status as a magistrate; or

(b) the payment of the magistrate's salary or allowances as a magistrate (subject to the operation of subsection (10)); or

(c) the ability of the person to do anything in the person's capacity as a magistrate; or

(d) any other right or privilege that the magistrate has by virtue of the office of magistrate.

(8) Service in the office of Deputy President of the Tribunal by a magistrate is taken, for all purposes, to constitute service as a magistrate.

(9) Subject to subsections (7) and (8), an appointment under subsection (1)(b) may be subject to conditions determined by the Governor.

(10) Without limiting subsection (9), in the case of an appointment under subsection (1)(b), the Remuneration Tribunal may determine that a Deputy President's salary or allowance as a magistrate will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).

(11) A person ceases to be a Deputy President of the Tribunal if—

(a) in the case of an appointment under subsection (1)(a)—the person ceases to be a judge of the District Court; or

(b) in the case of an appointment under subsection (1)(b)—the person ceases to be a magistrate; or

(c) the person resigns as Deputy President by written notice to the Attorney-General; or

(d) the person dies.

(12) Nothing in subsection (11)(c) affects a person's tenure or status as a judge (in the case of an appointment under subsection (1)(a)) or as a magistrate (in the case of an appointment under subsection (1)(b)).

(13) Before the Governor makes a proclamation under this section, the Attorney-General must consult with—

(a) the Chief Justice; and

(ab) the President; and

(b) in the case of an appointment under subsection (1)(a)—the Chief Judge; and

(c) in the case of an appointment under subsection (1)(b)—the Chief Magistrate.

14—Deputy President's functions generally

(1) A Deputy President of the Tribunal has the functions conferred on the Deputy President under this Act or any other Act.

(2) The functions of a Deputy President include—

(a) participating as a member of the Tribunal; and

(b) assisting the President in the management of the business of the Tribunal; and

(c) assisting the President in managing the members of the Tribunal, including in connection with the training, education and professional development of members of the Tribunal; and

(d) other functions assigned by the President.

(3) A Deputy President may do all things necessary or convenient to be done in the performance of the Deputy President's functions.

(4) A Deputy President is subject to the direction of the President in performing the Deputy President's functions, other than adjudicating in the Tribunal.

Subdivision 4—Magistrates

15—Magistrates

(1) Any magistrate holding office under the *Magistrates Act 1983* who is designated by the Governor, by proclamation, as a member of the Tribunal on a recommendation of the Attorney-General will (while he or she continues to hold office as a magistrate) be a member of the Tribunal.

(2) The Attorney-General must consult with the President of the Tribunal and the Chief Magistrate before making a recommendation under subsection (1).

(3) A magistrate appointed under this section will act as a full-time, part-time or sessional member of the Tribunal under an arrangement established by the President and the Chief Magistrate (being an arrangement that may be varied from time to time).

(4) The designation of a magistrate under this section does not affect—

(a) the magistrate's tenure of office or status as a magistrate; or

(b) the payment of the magistrate's salary or allowances as a magistrate; or

(c) the ability of the person from doing anything in the person's capacity as a magistrate; or

(d) any other right or privilege that the magistrate has as a magistrate.

Subdivision 5—Commissioners

16—Appointment of Commissioners

(1) The Governor may, on the recommendation of the Minister, appoint a person as a Commissioner.

(2) The Minister may from time to time appoint a panel of persons who will, at the request of the Minister—

(a) after consultation with the President, recommend the selection criteria for Commissioners;

(b) assess a candidate or candidates for appointment as a Commissioner (and, as appropriate, to provide advice to the Minister for the purposes of subsection (1)).

(3) A person is eligible for appointment as a Commissioner only if the person—

(a) is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State); or

(b) has, in the Minister's opinion, extensive knowledge, expertise or experience relating to a class of matter for which functions may be exercised by the Tribunal.

(4) In recommending persons for appointment as Commissioners, the Minister must have regard to—

(a) any criteria applying under subsection (2)(a); and

(b) any advice provided under subsection (2)(b); and

(c) the following:

(i) the need for balanced gender representation in the membership of the Tribunal;

(ii) the need for the membership of the Tribunal to reflect social and cultural diversity;

(iii) the range of knowledge, expertise and experience required within the membership of the Tribunal.

(5) The Minister must consult with the President of the Tribunal before making a recommendation under subsection (1).

(6) A Commissioner will be appointed for a term of office, not exceeding 5 years, specified in the instrument of appointment.

(7) A person appointed as a Commissioner is eligible for reappointment at the expiration of a term of office (and without the need for seeking advice from a panel established under subsection (2)).

(8) A Commissioner is appointed on conditions specified in the instrument of appointment.

(9) A Commissioner may be appointed on a full-time, part-time or sessional basis (and this may be altered from time to time with the agreement of the Minister).

(10) A Commissioner—

(a) must advise the President of the Tribunal of the nature of any paid employment or professional work undertaken outside his or her duties as a member of the Tribunal; and

(b) must not engage in any such employment or work if the President informs the member that, in the President's opinion, to do so would or may conflict with the proper performance of the member's duties of office.

(11) The Minister must consult with the President about—

(a) the conditions of an appointment under subsection (8); and

(b) the basis of an appointment under subsection (9).

17—Commissioner ceasing to hold office and suspension

(1) The Governor may, on the recommendation of the Minister, remove a Commissioner from office for—

(a) misconduct; or

(b) neglect of duty; or

(c) incompetence; or

(d) incapacity to carry out official duties satisfactorily.

(2) A person ceases to be a Commissioner if the person—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the Tribunal; or

(e) is removed from office under subsection (1).

(3) The Minister must consult with the President before making a recommendation under subsection (1).

(4) The President may, on his or her own initiative or at the request of the Minister, suspend a Commissioner from office if it appears that there may be grounds for the removal of the Commissioner from the Commissioner's office.

(5) If a Commissioner who is appointed on a full-time or part-time basis is suspended under subsection (4), the Commissioner remains entitled to the Commissioner's usual remuneration and allowances during the period of suspension.

18—Supplementary Commissioners

(1) The Minister may, at the request or with the agreement of the President of the Tribunal, temporarily appoint a person to act as a supplementary Commissioner in relation to a particular matter or matters or for a specified period.

(2) The Minister may only appoint a person under this section if he or she is eligible for appointment as a Commissioner.

(3) An appointment under this section must be made in writing.

(4) The person may act as a member of the Tribunal in relation to a matter, or for the period, for which the person is appointed, and when acting under the appointment the person is to be regarded as a Commissioner for the purposes of this Act and any relevant Act (and the other provisions of this Subdivision apply with any necessary modifications in relation to a person appointed under this section).

(5) A person appointed under this section is, for the period of appointment, entitled to be paid any salary or allowances determined by the Minister after consultation with the President of the Tribunal.

(6) A person appointed under this section for a particular period may be appointed to act for a further period by the Minister after consultation with the President of the Tribunal.

(7) The Governor may at any time, on the recommendation of the Minister, cancel the appointment of a person under this section.

(8) Before the Governor acts under subsection (7), the Minister must consult with the President of the Tribunal (unless the Minister is acting at the request of the President).

Division 3A—Supplementary panel members

18A—Supplementary panel members

(1) There will be such panels of supplementary panel members as may be necessary for the purposes of any relevant Act.

(2) A supplementary panel member will be appointed by the Governor on the recommendation of the Minister responsible for the administration of this Act in consultation with the Minister responsible for the administration of the relevant Act (unless otherwise provided by the relevant Act).

(3) A supplementary panel member will be appointed for a term of office, not exceeding 5 years, specified in the instrument of appointment and is eligible for reappointment at the expiration of a term of office.

(4) A supplementary panel member is appointed on conditions specified in the instrument of appointment.

(5) A supplementary panel member will sit on a sessional basis.

(6) Subject to the conditions of appointment, a supplementary panel member may perform work outside the Tribunal.

(7) The Governor may, on the recommendation of the Minister responsible for the administration of this Act after consultation with the Minister responsible for the administration of the relevant Act, remove a supplementary panel member from office for—

(a) misconduct; or

(b) neglect of duty; or

(c) incompetence; or

(d) incapacity to carry out official duties satisfactorily.

(8) A person ceases to be a supplementary panel member if the person—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the panel; or

(e) is removed from office under subsection (7).

(9) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of panels established under this section.

Division 4—Constitution of Tribunal and its decision-making processes

19—Constitution of Tribunal

(1) Subject to this section, the President may determine, in relation to a particular matter or matters, or particular classes of matters, which member or members of the Tribunal will constitute the Tribunal.

(1a) The Tribunal sitting as the South Australian Employment Court may only be constituted by members of the Tribunal who are also judges or magistrates (sitting alone or in any combination as the President thinks fit).

(2) The Tribunal is not to be constituted by more than 3 members.

(3) A Full Bench of the Tribunal consists of—

(a) when sitting as the South Australian Employment Court—3 Presidential members; or

(b) when acting as an industrial relations commission—3 members of which at least 1 must be a Presidential member.

(4) The President may, as he or she thinks fit—

(a) alter who is to constitute the Tribunal for the purpose of dealing with a matter, or anything relating to a matter, and the Tribunal as constituted after the alteration can have regard to any record of the proceedings of the Tribunal in relation to the matter before the alteration or any evidence taken in the proceedings before the alteration;

(b) provide that different aspects of the same matter may be dealt with by different members of the Tribunal, and the members of the Tribunal may then come together and have regard to any evidence taken by the respective members of the Tribunal for the purposes of the proceedings of the Tribunal.

(4a) If a member of the Tribunal who is not a Presidential member is to constitute the Tribunal, or is to be a member of a Full Bench of the Tribunal, for the purpose of dealing with any matter, the President must be satisfied that the member has appropriate knowledge, expertise, or experience relating to that class of matter.

(5) In addition, the Tribunal may be constituted of—

(a) a registrar for the purpose of adjourning proceedings; or

(b) a registrar or other member of the staff of the Tribunal for any other purpose specified by this Act or a relevant Act, prescribed by the rules of the Tribunal, or determined by the President.

(5a) In addition, a member of the Tribunal (not being a judge or magistrate), or a registrar or other member of the staff of the Tribunal, may assist with the business of the South Australian Employment Court to the extent that it may be appropriate to do so.

(6) The Tribunal may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

(7) The Tribunal may, if it considers it appropriate to do so, organise its business and regulate proceedings before the Tribunal in such a way that 2 or more proceedings in respect of the same matter are heard together.

(8) Where a registrar or other member of the staff of the Tribunal exercises the jurisdiction of the Tribunal, the registrar or other member of the staff may, and must if the Tribunal or the President of the Tribunal so directs, refer the matter to the Tribunal for determination by the Tribunal.

(9) If a provision of this Act and the provisions of a relevant Act deal with the manner in which the Tribunal is to be constituted for the purposes of proceedings or any other business under a relevant Act, this section applies subject to those provisions of the relevant Act.

20—Who presides at proceedings of Tribunal

(1) If, for dealing with a particular matter, the Tribunal is constituted by 2 or more members, the most senior of them is to preside at the proceedings of the Tribunal.

(2) The seniority of members of the Tribunal depends on which of the offices held takes precedence and, if that does not determine a member's seniority, the matter is to be resolved by the President of the Tribunal.

(3) The order of precedence of offices is as follows:

(a) President;

(b) Deputy President;

(c) magistrate;

(d) Commissioner;

(e) supplementary panel member.

21—Decision if 2 or more members constitute Tribunal

If the Tribunal is constituted by 2 or more members, a question they are required to decide is resolved, unless section 22 applies, according to the opinion of the majority of them but, if their opinions on the question are equally divided, the question is to be resolved according to the opinion of the presiding member.

22—Determination of questions of law

(1) The member of the Tribunal constituting the Tribunal or, if the Tribunal is constituted by 2 or more members, the presiding member, may refer a question of law to a Full Bench of the South Australian Employment Court.

(2) If a question of law is referred under this section—

(a) the question is decided by the Tribunal according to the opinion of the Full Bench of the South Australian Employment Court; or

(b) the Full Bench may refer the question to the Court of Appeal for determination.

(3) If a Full Bench of the Court decides a question of law under subsection (2), the Full Bench may, in addition—

(a) decide any other questions remaining between the parties; and

(b) make such orders that are necessary to dispose of the matter.

Division 5—Related matters

24—Validity of acts of Tribunal

An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in the membership of, or a defect in the appointment of a person to, the Tribunal or a panel from which members of the Tribunal are drawn, or a defect in the appointment of any other person to act on behalf of the Tribunal.

25—Disclosure of interest by members of Tribunal

If the Tribunal is constituted of, or includes, a member who has a pecuniary or other interest that could conflict with the proper performance of the member's functions in proceedings before the Tribunal, the member—

(a) must disclose the interest to the parties to the proceedings and to the President of the Tribunal; and

(b) must not take part in the proceedings or exercise powers affecting the proceedings—

(i) if the President directs the member to withdraw from the proceedings; or

(ii) if a party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceedings.

26—Delegation

(1) The President of the Tribunal may delegate a function or power of the President under this or any other Act—

(a) to another member of the Tribunal; or

(b) to a member of the staff of the Tribunal; or

(c) to the person (being either a member of the Tribunal or a member of the staff of the Tribunal) for the time being performing particular duties or holding or acting in a particular position.

(2) A delegation under subsection (1)—

(a) must be made by instrument in writing; and

(b) may be conditional; and

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

(d) is revocable at will by the President.

Division 6—Additional provisions relating to jurisdiction

26A—Declaratory judgments

Without limiting any specific jurisdiction to make declaratory judgments conferred by another Act, the South Australian Employment Court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

26B—Other provisions relating to civil jurisdiction of Court

Without limiting any other provision of this Act, the South Australian Employment Court may, in exercising any jurisdiction that is in the nature of a civil jurisdiction, exercise any power under Part 6 of the *District Court Act 1991*, subject to any exclusions or modifications prescribed by the regulations as if references to the District Court extended to the South Australian Employment Court.

26C—Binding nature of decisions

Without limiting any other provision of this Act, any decision or determination of the South Australian Employment Court is binding and authoritative in nature and binds the parties to the relevant matter by its own force.

Division 7—Additional provisions relating to jurisdiction under *Return to Work Act 2014*

26D—Civil jurisdiction under *Return to Work Act 2014*

(1) The South Australian Employment Court has exclusive jurisdiction to hear and determine an action for damages to which Part 5 of the *Return to Work Act 2014* applies.

(2) Proceedings for any tortfeasor liable in respect of damages to which Part 5 of the *Return to Work Act 2014* applies to recover contribution from any other tortfeasor liable in respect of those damages may be brought before the Tribunal and dealt with by the South Australian Employment Court.

(3) If a cause of action giving rise to proceedings brought under subsection (1) or (2) also gives rise to a claim in respect of some other matter, the claim may be included in those proceedings even though it does not relate to proceedings for damages within the scope of section 71(1) of the *Return to Work Act 2014*.

(4) Any matter that is ancillary or related to a matter that is the subject of proceedings brought under a preceding subsection may also be included in those proceedings.

(5) In connection with the operation of this section, a reference to a court in a prescribed provision will be taken to be a reference to the South Australian Employment Court.

(6) In this section—

prescribed provision means any of the following provisions of the *Return to Work Act 2014*:

(a) section 22;

(b) Part 5;

(c) Part 8.

26E—Rights of action and recovery against third parties

(1) A reference in section 66 of the *Return to Work Act 2014* to the District Court of South Australia will be taken to include a reference to the Tribunal.

(2) The jurisdiction of the Tribunal by virtue of the operation of subsection (1) is assigned to the South Australian Employment Court.

(3) An action to recover an excess under section 66(9) of the *Return to Work Act 2014* may be brought in the South Australian Employment Court (or in any other court of competent jurisdiction).

26F—Review jurisdiction under *Return to Work Act 2014*

A reference in section 103 of the *Return to Work Act 2014* to Part 3 of this Act will be taken to be a reference to Division 1 of that Part.

26G—Injuries that develop gradually

(1) A reference in section 188 of the *Return to Work Act 2014* to the Industrial Relations Court of South Australia will be taken to be a reference to the Tribunal.

(2) The jurisdiction of the Tribunal by virtue of the operation of subsection (1) is assigned to the South Australian Employment Court.

26H—Criminal jurisdiction

The South Australian Employment Court is conferred with jurisdiction to try a charge for an offence against the *Return to Work Act 2014*.

26I—Appeals

An appeal from a decision of the Tribunal under the *Return to Work Act 2014* (other than in the exercise of its criminal jurisdiction) will be limited to a question of law.

Division 8—Additional provisions relating to jurisdiction under *Workers Compensation Act 1971*

26IA—Additional provisions relating to jurisdiction under *Workers Compensation Act 1971*

(1) The purpose of this section is, in consequence of—

(a) the continued application of the *Workers Compensation Act 1971*[1] under Schedule 9 clause 59(1) of the *Return to Work Act 2014*; and

(b) the dissolution of the Industrial Relations Court under section 69 of the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*,

to confer on the Tribunal the same jurisdiction under the *Workers Compensation Act 1971* that was previously conferred on the Industrial Relations Court.

Note—

[1] The *Workers Compensation Act 1971* was repealed by the *Workers Rehabilitation and Compensation Act 1986*.

(2) The *Workers Compensation Act 1971* is to be read—

(a) as if a reference in that Act to the "Court" were a reference to the Tribunal; and

(b) as if reference in that Act to a "Judge" were a reference to a Presidential member of the Tribunal who is a District Court judge; and

(c) as if a reference in that Act to the "Registrar" were a reference to a registrar of the Tribunal; and

(d) as if a reference in that Act to an "Industrial magistrate" were a reference to a Presidential member of the Tribunal who is a magistrate; and

(e) as if a reference in that Act to the "Rules" were a reference to the Rules of the Tribunal; and

(f) as if a reference in that Act to the "Regulations" were a reference to regulations under this Act; and

(g) as if a reference in that Act to the "Full Industrial Relations Court" were a reference to the Full Bench of the Tribunal in Court Session.

(3) The jurisdiction of the Tribunal by virtue of the operation of subsection (2) is assigned to the South Australian Employment Court.

Part 3—Exercise of jurisdiction

Division 1—Review jurisdiction

26J—Application of Division

(1) This Division applies if—

(a) the Tribunal is dealing with a matter that involves the review of a decision made under an Act (including in a case that constitutes an appeal under a relevant Act); or

(b) a relevant Act provides for the Tribunal to deal with a matter under this Division; or

(c) the rules apply this Division to a matter within the jurisdiction of the Tribunal.

(2) Subsection (1)(a) does not apply in any circumstances prescribed by the regulations.

27—General nature of proceedings

(1) Subject to a relevant Act, a matter under this Division will be dealt with by the Tribunal as a review of the decision that constitutes the matter.

(2) Where the review of a decision is to be undertaken, the person or body that made or is taken to have made the decision is the ***decision-maker*** for the purposes of these provisions.

(3) Subject to subsections (4), (5) and (6), the Tribunal will examine the decision of the decision-maker by way of rehearing.

(4) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to the decision of the original decision-maker.

(5) A procedure on a rehearing will include—

(a) an examination of the evidence or material before the decision-maker (unless any such evidence or material is to be excluded under another provision of this Act or under any other law); and

(b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for the purposes of rehearing the matter.

(6) In dealing with a matter under this Division, the Tribunal is to deal with the matter in accordance with this Act and any relevant Act.

(7) Furthermore, a relevant Act may modify the operation of this Act in relation to a matter that comes within the exercise of the Tribunal's jurisdiction under this Division.

28—Decision-maker must assist Tribunal

(1) In proceedings for a review of a decision, the decision-maker must use his or her best endeavours to help the Tribunal so that it can make its decision on the review.

(2) Without limiting subsection (1), the decision-maker must provide the following to the Tribunal within a reasonable period and in any event within the time prescribed by the regulations:

(a) a written statement of the reasons for the decision;

(b) any document or thing in the decision-maker's possession or control that may be relevant to the Tribunal's review of the decision.

(3) The decision-maker must, in providing any document or thing under subsection (2), take reasonable steps to identify the documents or things that were taken into account in making the relevant decision.

(4) If the Tribunal considers that there are additional documents or things in the decision-maker's possession or control that may be relevant to the Tribunal's review of the reviewable decision, the Tribunal may, by written notice, require the decision-maker to provide the documents or things.

(5) If the Tribunal considers the statement of reasons given under subsection (2)(a) is not adequate, the Tribunal may, by written notice, require the decision-maker to give the Tribunal an additional statement containing stated further particulars.

(6) The decision-maker must comply with a notice given under subsection (4) or (5) within the period stated in the notice.

(7) A requirement under this section that the decision-maker give the Tribunal information or a document or thing applies despite any provision in another Act prohibiting or restricting the disclosure of the information or the information contained in the document or thing.

(8) The Tribunal may examine any document or thing provided under this section and draw any conclusions of fact it considers proper.

29—Effect of review proceedings on decision being reviewed

(1) The commencement of proceedings for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless—

(a) the relevant Act states otherwise; or

(b) an order is made under subsection (2).

(2) On or after the commencement of proceedings for a review of a decision, the Tribunal or the decision-maker may, on application or on its own initiative, make an order staying or varying the operation or the implementation of the whole or a part of the decision pending the determination of the matter, or until such time (whether before or after the determination of the matter) as the Tribunal or the decision-maker may specify, if the Tribunal, or the decision-maker, is satisfied that it is just and reasonable in the circumstances to make the order.

(3) An order by the Tribunal or the decision-maker under this section—

(a) is subject to such conditions as are specified in the order; and

(b) may be varied or revoked—

(i) in any case—by further order of the Tribunal; or

(ii) if the order was made by the decision-maker—by further order by the decision-maker or the Tribunal.

30—Decision on review

(1) The Tribunal may, on a review of a decision—

(a) affirm the decision that is being reviewed; or

(b) vary the decision that is being reviewed; or

(c) set aside the decision being reviewed and—

(i) substitute its own decision; or

(ii) send the matter back to the decision-maker for reconsideration in accordance with any directions or recommendations that the Tribunal considers appropriate,

and, in any case, may make any order the Tribunal considers appropriate (including any interim order pending the reconsideration and determination of the matter by the decision-maker, or any ancillary or consequential order, that the Tribunal considers appropriate).

(2) The fact that a decision is made on reconsideration under subsection (1)(c)(ii) does not prevent the decision from being open to review by the Tribunal.

(3) The decision-maker's decision as affirmed or varied by the Tribunal or a decision that the Tribunal substitutes for the decision-maker's decision—

(a) is to be regarded as, and given effect as, a decision of the decision-maker; and

(b) unless the relevant Act states otherwise or the Tribunal orders otherwise, is to be regarded as having effect, from the time when the decision reviewed would have, or would have had, effect.

(4) Without limiting subsection (3)(a), the decision-maker has power to do anything necessary to implement the Tribunal's decision.

(5) Despite subsection (3)(a), the decision as affirmed, varied or substituted is not again open to review before the Tribunal as a decision of the decision-maker (but may be subject to appeal under this Act).

31—Tribunal may invite decision-maker to reconsider decision

(1) At any stage of proceedings for the review of a decision, the Tribunal may invite the decision-maker to reconsider the decision.

(2) On being invited by the Tribunal to reconsider the decision, the decision-maker may—

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute a new decision.

(3) If the decision-maker varies the decision or sets it aside and substitutes a new decision, unless the proceedings for a review are withdrawn, the proceedings will then be taken to be for—

(a) the review of the decision as varied; or

(b) the review of the substituted decision.

(4) The Tribunal may specify a period within which the decision-maker should act under this section (and if the decision-maker does not take action within that period then the Tribunal may resume its proceedings under this Part in such manner as it thinks fit).

Division 2—Application of Division

31A—Application of Division

(1) This Division applies in cases where Division 1 does not apply.

(2) Subject to a relevant Act, a matter under this Division will, depending on the nature of the matter, be dealt with by the Tribunal—

(a) acting as the original decision-maker in the matter (and according to those principles which, according to law, are to be applied to bodies that make such decisions according to statute); or

(b) resolving a dispute between the parties to the relevant proceedings (according to law and including, if appropriate, by giving a judgment, making a declaration or providing any other remedy); or

(c) adopting any other course of action and providing any other relief, decision or determination that the Tribunal considers appropriate to deal with the matter.

(3) In dealing with a matter under this Division, the Tribunal is to deal with the matter in accordance with this Act and any relevant Act.

(4) Furthermore, a relevant Act may modify the operation of this Act in relation to a matter that comes within the exercise of the Tribunal's jurisdiction under this Division.

Part 4—Principles, powers and procedures

Division 1—Principles governing hearings

32—Principles governing hearings

(1) On the hearing of any proceedings, but subject to the provisions of a relevant Act—

(a) the procedure of the Tribunal will, subject to this Act, be conducted with the minimum of formality; and

(b) the Tribunal is not bound by the rules of evidence, may adopt, as in its discretion it considers appropriate, any findings, decision or judgment of a court or other tribunal (insofar as may be relevant to the proceedings before the Tribunal), and may otherwise inform itself as it thinks fit; and

(c) the Tribunal must act according to equity, good conscience and the substantial merits of the case and without regard to legal technicalities and forms.

(1a) However, the rules of evidence and other formal procedures of a court of record apply to the South Australian Employment Court to the extent that the Court considers it necessary or appropriate and the Tribunal (in the exercise of any jurisdiction) may give directions about any question of evidence.

(2) Nothing in this Act affects any rule or principle of law relating to—

(a) legal professional privilege; or

(b) "without prejudice" privilege; or

(c) public interest immunity.

(3) This section does not limit the operation of section 64.

Division 2—Evidentiary powers

33—Power to require person to give evidence or to produce evidentiary material

(1) The Tribunal may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Tribunal at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A summons to produce evidentiary material may, instead of providing for production of the material before the Tribunal, provide for production of the material to an officer of the Tribunal, or to any person nominated in the summons.

(3) The Tribunal may—

(a) retain any document, object or substance produced before it for such reasonable period as it thinks fit, and make copies of any document; and

(b) require a person to make an oath or affirmation (which may be administered by any member or officer of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal; and

(c) require any person to answer any questions put by any member of the Tribunal or any person appearing before the Tribunal that are determined by the Tribunal to be relevant to the proceedings before the Tribunal.

(4) A person who is called to give evidence or to produce evidentiary material before the Tribunal and—

(a) refuses or fails to make an oath or affirmation when required to do so under this section; or

(b) refuses or fails without reasonable excuse to produce evidentiary material that the person is required by the Tribunal to produce; or

(c) refuses or fails without reasonable excuse to appear before the Tribunal in response to a summons; or

(d) refuses or fails without reasonable excuse to give evidence before the Tribunal or otherwise refuses or fails without reasonable excuse to answer any question put in proceedings before the Tribunal or otherwise required under this Act; or

(e) gives false or misleading evidence to the Tribunal; or

(f) misbehaves before the Tribunal, wilfully insults the Tribunal or 1 or more members or officers of the Tribunal in the exercise of official duties, or wilfully interrupts the proceedings of the Tribunal,

is guilty of an offence.

Maximum penalty: $25 000 or imprisonment for 1 year.

(5) A summons under this section may be issued on behalf of the Tribunal by—

(a) any member of the Tribunal; or

(b) a registrar; or

(c) any other officer authorised under the rules or by the President of the Tribunal to issue such summonses.

34—Entry and inspection

(1) A member of the Tribunal may enter any land, building, structure, ship or vessel and carry out any inspection that the Tribunal considers relevant to any proceedings before the Tribunal.

(2) A member of the Tribunal may authorise an officer of the Tribunal, or any other specified person, to enter any land, building, structure, ship or vessel and carry out an inspection that the member considers relevant to any proceedings before the Tribunal.

(3) A person who obstructs a member of the Tribunal, or a person authorised by the Tribunal, in the exercise of a power of entry or inspection under this section is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 6 months.

35—Expert reports

(1) The Tribunal may refer any question arising in any proceedings for investigation and report by an expert in the relevant field.

(2) The Tribunal must seek submissions from the parties to the proceedings before making a reference under this section.

(3) A person to whom a question is referred under this section becomes an officer of the Tribunal and may exercise such powers of the Tribunal as the Tribunal delegates.

(4) The Tribunal may adopt a report obtained under this section in whole or in part (or may reject it).

(5) Any action taken under subsection (4) does not prevent the Tribunal from making a further reference to an expert.

(6) The Tribunal may order a party to pay or contribute to the costs of an expert's investigation and report under this section.

Division 3—Procedures

36—Practice and procedure generally

(1) The Tribunal is to take measures that are reasonably practicable—

(a) to ensure that the parties to any proceedings have a reasonable opportunity to understand the nature of the matter under consideration; and

(b) to ensure that the parties to any proceedings understand the nature of any assertions made in the proceedings and the legal implications of those assertions; and

(c) to explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal; and

(d) to ensure that the parties have the opportunity in any proceedings to be heard or otherwise have their submissions received.

(2) The Tribunal—

(a) is to take all practicable steps to ensure that all relevant material is disclosed to the Tribunal so as to enable it to determine all the relevant facts in issue in any proceedings; and

(b) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument; and

(c) may limit the time available for presenting the respective cases of parties before it at a hearing to an extent that it considers would not impede the fair and adequate presentation of the cases; and

(d) may require a document to be served outside the State; and

(e) may adjourn any proceedings at any time and to any place (including for the purpose of enabling the parties to negotiate a settlement or for the purpose of reconsideration of a decision by the decision-maker); and

(f) may proceed to hear and determine proceedings in the absence of a party.

(3) To the extent that the practice or procedure of the Tribunal is not prescribed by or under this Act or a relevant Act, it is to be as the Tribunal determines.

37—Directions for conduct of proceedings

(1) The Tribunal may give directions at any time in any proceedings and do whatever is necessary for the speedy and fair conduct of the proceedings.

(2) The Tribunal may give directions on its own initiative or at the request of a party.

(3) A directions hearing may be held for the purposes of this section before any other hearing in any proceedings.

(4) The Tribunal may give a direction requiring a party to produce a document or other material, or to provide information, to the Tribunal or another party.

38—Consolidating and splitting proceedings

(1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts or circumstances—

(a) be consolidated into 1 proceeding; or

(b) remain as separate proceedings but be heard and determined together.

(2) If proceedings are consolidated, evidence given in the consolidated proceedings is admissible in relation to matters involved in either of the proceedings that were consolidated.

(3) The Tribunal may direct—

(a) that any aspect of any proceedings be heard and determined separately;

(b) that proceedings commenced by 2 or more persons jointly be split into separate proceedings.

39—More appropriate forum

The Tribunal may, at any time, make an order striking out all, or any part, of any proceedings if it considers that the matter, or any aspect of it, would be more appropriately dealt with by another tribunal, a court, or any other person.

40—Dismissing proceedings on withdrawal or for want of prosecution

(1) The applicant in any proceedings may withdraw or agree to the withdrawal of the proceedings or a part of the proceedings.

(2) Unless otherwise provided by the rules, an applicant can only act under subsection (1) with the leave of the Tribunal.

(3) The Tribunal may make an order dismissing or striking out all, or any part, of any proceedings if the applicant withdraws or agrees to the withdrawal of the proceedings or that part of it.

(4) At any time, the Tribunal may make an order dismissing or striking out all, or any part, of any proceedings for want of prosecution.

(5) The Tribunal's power to make an order under subsection (4) is exercisable only by a legally qualified member of the Tribunal.

(6) The Tribunal may make an order under this section on the application of a party or on its own initiative.

41—Frivolous, vexatious or improper proceedings

(1) This section applies if the Tribunal believes that a proceeding—

(a) is frivolous, vexatious, misconceived or lacking in substance or involves a trivial matter or amount; or

(b) is being used for an improper purpose; or

(c) is otherwise an abuse of process.

(2) If this section applies, the Tribunal may order that the proceeding be dismissed or struck out and may make any related or ancillary order.

(3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.

(4) If a proceeding is dismissed or struck out under this section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of a Presidential member.

42—Proceedings being conducted to cause disadvantage

(1) This section applies if the Tribunal believes that a party to any proceedings is conducting the proceedings in a way that unnecessarily disadvantages another party to the proceedings by conduct such as—

(a) failing to comply with an order or direction of the Tribunal without reasonable cause; or

(b) failing to comply with this Act or a relevant Act; or

(c) asking for an adjournment the need for which is attributable to a failure described in paragraph (a) or (b); or

(d) attempting to deceive another party or the Tribunal; or

(e) vexatiously conducting the proceedings; or

(f) failing to attend any hearing in the proceedings.

(2) If this section applies, the Tribunal may—

(a) if the party causing the disadvantage is the applicant, order that the proceedings be dismissed or struck out; and

(b) if the party causing the disadvantage is not the applicant—

(i) determine the proceedings in favour of the applicant and make any appropriate orders; or

(ii) order that the party causing the disadvantage be struck out of the proceedings.

(3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.

(4) If any proceedings are dismissed or struck out under this section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of a Presidential member.

Division 4—Conferences, mediation and settlement

Subdivision 1—Conferences

43—Compulsory conciliation conferences

(1) The Tribunal may, at an initial directions hearing or at any other time, require parties to any proceedings to attend a compulsory conciliation conference (a ***compulsory conference***).

(2) The Tribunal must, if so required by the rules or a relevant Act, require parties to attend a compulsory conference.

(3) However, subject to a relevant Act, the Tribunal may dispense with a conference in prescribed circumstances.

(4) A conference must be commenced within the time fixed by the rules.

(5) The purpose of a compulsory conference is to identify, clarify and narrow the issues in the proceedings and to promote the resolution of the matters by a settlement between the parties.

(5a) The parties to a compulsory conference must ensure, so far as is reasonably practicable, that the conference is attended by persons with sufficient decision-making authority to fully participate in settlement discussions.

(6) A compulsory conference may, at the discretion of the member of the Tribunal presiding at the conference, be adjourned or reconvened from time to time.

(7) However—

(a) proceedings constituting a compulsory conference under the *Return to Work Act 2014* should not run over a period exceeding 10 weeks; and

(b) if the rules fix a period of time in relation to proceedings constituting a compulsory conference under another relevant Act, those proceedings should not run over a period exceeding the period so fixed,

unless the member of the Tribunal presiding at the conference is satisfied that an extension of time is justified on the basis that there is a substantial likelihood the proceedings will resolve by settlement if the extension occurs.

(8) If the period in which proceedings constituting a compulsory conference are conducted is extended in accordance with subsection (7), the member of the Tribunal presiding at the conference must notify the parties in writing of the decision to extend the period.

(9) Unless the member of the Tribunal presiding at the conference directs otherwise, a compulsory conference is to be held in private.

(10) Subject to this section and except to the extent to which the rules may specify the procedure for a compulsory conference, the member of the Tribunal presiding at a compulsory conference may determine the procedure for the conference.

(11) The member of the Tribunal presiding at a compulsory conference may—

(a) require a party to the proceedings to furnish particulars of his or her case;

(b) determine who, apart from the parties to the proceedings (and their representatives), may be present at the conference;

(c) subject to subsection (15), record any settlement reached at a conference and make any determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to a settlement;

(ca) enlarge the scope of the proceedings in accordance with section 65;

(d) on his or her own initiative, close the conference at any time if, in his or her opinion, settlement cannot be reached;

(e) advise the Tribunal if the conference does not reach a settlement within a reasonable time;

(f) permit a party to withdraw from the proceedings (and make any consequential order that is appropriate in the circumstances);

(g) determine a matter against any party who obstructs or delays the conference, fails to attend the conference, or fails to comply with a rule or order of the Tribunal and, in so doing, make any order as the member of the Tribunal thinks fit (including an order as to costs);

(h) do such other things as the rules of the Tribunal so provide.

(12) Despite section 22, the member of the Tribunal presiding at a compulsory conference may not refer a question of law to a Full Bench of the Tribunal.

(13) If settlement of a matter is not reached at a compulsory conference, the member of the Tribunal presiding at the conference—

(a) must give to the parties an assessment of the merits of the party's case; and

(b) must seek to recommend ways to resolve any matter in dispute.

(14) Evidence of anything said or done in the course of a compulsory conference under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

(15) The member of the Tribunal presiding at a compulsory conference—

(a) must not accept a settlement that appears to be inconsistent with a relevant Act (but he or she may adjourn the proceedings to enable the parties to explore the possibility of varying the settlement to comply with a relevant Act); and

(b) may decline to accept a settlement on the basis that the settlement may materially prejudice any person who was not represented at the conference but who has a direct or material interest in the matter.

(16) If the member of the Tribunal presiding at a conference is unable to continue with the conference, another member of the Tribunal may be appointed to continue and complete the conference.

(17) Unless all parties to the proceedings agree to his or her continued participation, the member of the Tribunal who presided at the conference is disqualified from sitting as a member of the Tribunal for the purpose of hearing and determining the matter.

(18) A registrar is expressly authorised to constitute the Tribunal for the purposes of this section.

(19) The rules may set out circumstances where the outcome of any proceedings under this section (including details of a settlement) are to be available to members of the public.

44—Referral of matters for hearing and determination

If a compulsory conciliation conference under this Subdivision does not result in an agreed settlement of the matter, the member of the Tribunal presiding at the conference must (unless a relevant Act provides otherwise) refer the matter for hearing and determination.

45—Pre-hearing conferences

(1) Before the Tribunal proceeds with the hearing of a matter, a pre-hearing conference must be held before a Presidential member of the Tribunal.

(2) The Presidential member presiding at the conference—

(a) must—

(i) make an assessment of the matter; and

(ii) for the purpose of making the assessment—

(A) inquire into and consider the steps taken, and the steps that should be taken, to explore, or further explore, possible settlement of the matter (including referral of the matter to a Presidential member of the Tribunal for mediation); and

(B) seek to identify and narrow the issues in dispute; and

(b) may give such directions or orders as he or she considers appropriate.

(3) This section applies to and in relation to—

(a) proceedings under the *Return to Work Act 2014*; and

(b) any other proceedings prescribed by the regulations.

Subdivision 2—Mediation

46—Mediation

(1) The Tribunal may, at an initial directions hearing, a compulsory conciliation conference or at any other time, refer the matter, or any aspect of the matter, for mediation by a person specified as a mediator by the Tribunal.

(2) The person specified as a mediator must be a person who has been approved by the President of the Tribunal to act as a mediator.

(3) The referral may be made with or without the consent of the parties.

(4) The purpose of a mediation is to achieve the resolution of the matters by a settlement between the parties or, if a settlement is not achievable through this process, to further refine or narrow the issues in dispute.

(5) The rules may specify how notice of the mediation is to be given, how the mediation is to be conducted, and the fees to be paid by a party to the mediation.

(6) Unless the mediator directs otherwise, the mediation is to be held in private.

(7) Subject to this section and except to the extent to which the rules may specify the procedure for a mediation, the mediator may determine the procedure for the mediation.

(8) If the mediator is a member of the Tribunal and a settlement is reached at the mediation, the mediator may reduce the terms of the settlement to writing and make any determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to the settlement.

(9) If a settlement is not reached at the mediation or the mediator is not a member of the Tribunal, the mediator is to report on the outcome of the mediation to the Tribunal as constituted when it made the referral.

(10) Any settlement under this section—

(a) must not be inconsistent with a relevant Act; and

(b) may be rejected by the Tribunal on the basis that the settlement may materially prejudice any person who has not participated in the mediation but who has a direct or material interest in the matter.

(11) Evidence of anything said or done in the course of a mediation under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

(12) If the mediator is a member of the Tribunal, the member cannot take any further part in dealing with the proceedings after the mediation, unless all parties to the proceedings agree to his or her continued participation.

(13) The rules may set out circumstances where the outcome of any proceedings under this section (including details of a settlement) are to be available to members of the public.

Subdivision 3—Settling proceedings

47—Settling proceedings

(1) The Tribunal may itself endeavour to achieve a negotiated settlement of a matter before the Tribunal.

(2) If the parties agree in writing to settle a matter before the Tribunal, the Tribunal may make any determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to the settlement.

(3) A settlement under this section must not be inconsistent with a relevant Act and the Tribunal may reject a settlement under subsection (2) on the basis that the settlement may materially prejudice any person who is not a party to the settlement but who has a direct or material interest in the matter or that the terms of the settlement are inappropriate.

Division 5—Parties

48—Parties

(1) A person is a party to proceedings before the Tribunal if the person is—

(a) the applicant; or

(b) in the case of proceedings involving the review of a decision—the decision-maker; or

(c) without limiting a preceding paragraph, a respondent to an application before the Tribunal, a person against whom a claim is made by proceedings brought before the Tribunal, or a party to a dispute before the Tribunal; or

(d) a person joined in the proceedings by order of the Tribunal; or

(e) a person lawfully intervening in the proceedings; or

(f) a person specified by another provision of this Act or a relevant Act to be a party to the proceedings.

(2) Subsection (1) applies subject to any provision or exclusion made by the rules of the Tribunal.

(3) In any proceedings where a decision-maker is a party, the official description rather than the personal name of the decision-maker is to be used so far as is practicable.

49—Joinder of parties etc

(1) The Tribunal may order that a person be joined as a party to proceedings before the Tribunal if the Tribunal considers that—

(a) the person should be bound by, or have the benefit of, a decision of the Tribunal in the proceedings; or

(b) the person's interests are affected by the proceedings; or

(c) for any other reason it is desirable that the person be joined as a party.

(1a) The Tribunal may order that a person who is a party to proceedings before the Tribunal be removed as a party if the Tribunal considers that the person has no proper interest in the proceedings.

(1b) The Tribunal may order that notice of proceedings be given to specified persons or in a specified way.

(2) The Tribunal may make an order under this section—

(a) on the application of any person or on its own initiative; and

(b) without notice to the person to whom the order relates.

50—Intervening

(1) The Attorney-General may, on behalf of the State, intervene in any proceedings before the Tribunal at any time.

(2) The Tribunal may give leave at any time for any other person to intervene in proceedings before the Tribunal on conditions, if any, that the Tribunal thinks fit.

Division 6—Representation

51—Representation

(1) A party to proceedings before the Tribunal is entitled to appear (subject to the provisions of a relevant Act)—

(a) personally; or

(b) by counsel; or

(c) with the leave of the Tribunal and subject to the rules—by other representative.

(1a) If jurisdiction is conferred on the Tribunal under the *Fair Work Act 2009* of the Commonwealth, a party to proceedings before the Tribunal under that Act is entitled (subject to that Act or any other relevant Commonwealth law), without leave, to be represented by—

(a) an officer or employee of an organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth acting in the course of their office or employment with that organisation; or

(b) a registered agent under the *Fair Work Act 1994*.

(2) Unless otherwise determined by the Tribunal, a person appearing before the Tribunal may be assisted by another person as a friend.

(3) A person may not act as a representative in proceedings before the Tribunal if—

(a) the person is a legal practitioner whose practising certificate has been suspended; or

(b) the person's name has been struck off the roll of legal practitioners; or

(c) the person would be acting in any other manner that is inconsistent with disciplinary proceedings that have been taken under the *Legal Practitioners Act 1981*.

(4) If, in accordance with a relevant Act, a person who is not a legal practitioner (the ***representative***) is entitled to appear in proceedings before the Tribunal as a representative of a party (the ***first party***), evidence is not to be adduced in proceedings and material is not required to be disclosed to another party in proceedings if, on objection by the first party, the Tribunal finds that—

(a) adducing the evidence or disclosing the material would result in the disclosure of—

(i) a confidential communication between the first party and the representative; or

(ii) the contents of a confidential document prepared by the representative; and

(b) the communication or document was for the dominant purpose of—

(i) providing advice to the first party; or

(ii) preparing for or conducting a proceeding, or anticipated proceeding,

in relation to a matter in which the representative would be entitled to appear before the Tribunal in accordance with a relevant Act.

Division 7—Costs

52—Costs

(1) Subject to this Act or a relevant Act, parties bear their own costs in any proceedings before the Tribunal (other than proceedings assigned to the South Australian Employment Court to which section 26B applies).

(2) If the Tribunal makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed and settled in accordance with the rules.

53—Costs—related matters

(1) Any power of the Tribunal under this Act or a relevant Act to make an order for the payment by a party of the costs of another party includes the power to make an order for the payment of an amount to compensate the other party for any expenses or loss resulting from any proceedings or matter.

(2) Without limiting anything else that may be considered in making an order for the payment by a party of the costs of another party, where the matter that is the subject of any proceedings comes within the Tribunal's review jurisdiction, the Tribunal is to have regard to—

(a) whether the party genuinely attempted to enable and assist the decision-maker to make a decision on its merits;

(b) whether the party (being the decision-maker) genuinely attempted to make a decision on its merits.

(3) The rules may deal with the effect of certain offers to settle, and the response, if any, to the offer, on the making of an order for the payment by a party of the costs of another party.

(4) The Tribunal may order that the representative of a party, rather than the party, in the representative's own capacity compensate that or any other party for costs incurred because the representative acted in, or delayed, any proceedings in a way that resulted in unnecessary costs.

Division 8—Other procedural and related provisions

54—Sittings

The Tribunal will sit at such times and places as the President of the Tribunal may direct (including at different places at the same time).

55—Hearings in public

(1) Subject to this or any other Act, proceedings before the Tribunal must be heard in public.

(2) The Tribunal may, where it is satisfied that it is desirable to do so—

(a) in the interest of justice; or

(b) by reason of the confidential nature of the evidence to be given before the Tribunal; or

(c) in order to expedite proceedings of the Tribunal; or

(d) for any other reason that the Tribunal thinks sufficient,

give directions—

(e) requiring that a hearing, or part of a hearing, be held in private; or

(f) prohibiting or restricting the publication of the name and address of a witness appearing before the Tribunal; or

(g) prohibiting or restricting the publication of evidence given before the Tribunal or of the contents of any document produced to the Tribunal; or

(h) prohibiting or restricting the disclosure to some or all of the parties to proceedings before the Tribunal of evidence given before the Tribunal or of the contents of any document produced to the Tribunal; or

(i) excluding any person from the hearing before the Tribunal of any part of the proceedings.

(3) A person must comply with a direction of the Tribunal under subsection (2).

Maximum penalty: $10 000.

56—Preserving subject matter of proceedings

(1) The Tribunal may, on such terms as appear just, make any order that may be necessary to preserve the subject matter of proceedings, or to otherwise protect the interests of a party, until questions arising in the proceedings have been finally determined.

(2) The Tribunal's power to make an order under subsection (1) is exercisable by—

(a) a Presidential member of the Tribunal; or

(b) any other legally qualified member of the Tribunal who is authorised by the President of the Tribunal to make orders under this section.

(3) The Tribunal may make the order on the application of a party or on its own initiative.

(4) An order may be made under this section whether or not a person whose interests may be affected—

(a) is a party; or

(b) has been given an opportunity to be heard.

(5) An order may be made under this section—

(a) for a specified period; or

(b) until a specified event or stage in the proceedings.

(6) In making an order under this section, the Tribunal—

(a) may require an undertaking as to costs or damages as it considers appropriate; and

(b) may provide for the revocation of the order if specified conditions are met.

(7) The Tribunal may assess any costs or damages referred to in subsection (6)(a) and any amount so assessed is recoverable as a debt in a court of competent jurisdiction.

(8) The rules may place conditions on the Tribunal's power to make an order under this section.

(9) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under a relevant Act to make an order in the nature of an injunction or interim injunction.

57—Security as to costs etc

(1) The Tribunal may order a party to proceedings before the Tribunal to give security for the payment of costs or to give an undertaking as to the payment of other monetary amounts that may be awarded against the party.

(2) The security referred to in subsection (1) will be of such amount, and given at such time and in such manner and form, as the Tribunal directs.

(3) The Tribunal may reduce or increase the amount of security ordered under subsection (1) to be given and may vary the time at which, or the manner or form in which, the security is to be given.

(4) If security, or further security, or an undertaking, is not given in accordance with an order under this section, the Tribunal may order that the proceedings be dismissed (with costs), or that a determination (with costs) be made against the party.

(5) The provisions of this section relating to security, or the giving of an undertaking, do not affect the operation of any provision made by or under a relevant Act or by the rules for or in relation to the furnishing of security, the giving of an undertaking or the imposition of costs.

(6) A member of the Tribunal who is not a legally qualified member of the Tribunal may not make an order under this section except with the concurrence of a legally qualified member.

58—Interlocutory orders

The Tribunal has power, in relation to matters within its jurisdiction, to make interlocutory orders.

59—Conditional, alternative and ancillary orders and directions

(1) The Tribunal may make orders and give directions on conditions the Tribunal considers appropriate.

(2) The Tribunal may make orders in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.

(3) The Tribunal may, when making an ancillary order, provide that a decision of the Tribunal is to be implemented by a person who is not a party to the relevant proceedings.

60—Special referees

(1) The Tribunal may refer any question arising in any proceedings to a special referee for the special referee—

(a) to decide the question; or

(b) to give his or her opinion in relation to it.

(2) The Tribunal may adopt a special referee's decision or opinion, in whole or in part, or reject it.

61—Relief from time limits

(1) The rules may provide for the Tribunal to extend or abridge a time limit for doing anything in connection with any proceedings, or the commencement of any proceedings, even though the limit is imposed under this Act or a relevant Act.

(2) The extension—

(a) may be authorised even though the time for complying has passed; and

(b) may be given on conditions specified by the Tribunal.

62—Electronic hearings and proceedings without hearings

(1) If the Tribunal thinks it appropriate, it may allow the parties and their representatives and any witnesses (or 1 or more of them) to participate in a hearing in any proceedings by means of telephone, video link, or any other system or method of communication.

(2) If the Tribunal thinks it appropriate, it may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing.

(3) If the Tribunal acts under this section, the Tribunal is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Tribunal with the attendance in person of all persons involved in the proceedings.

63—Completion of part-heard matters

A person who ceases to hold office as a member of the Tribunal (other than on account of having his or her appointment revoked or being removed from office) may nevertheless continue to act in the relevant office for the purpose of completing the hearing and determination of proceedings part-heard by the person when he or she ceased to hold that office.

64—Other claims of privilege

(1) A person is excused from answering a question or producing a document or other material in any proceedings if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.

(2) The Tribunal may require a person to produce a document or other material to it for the purpose of determining whether or not it is a document or material that the Tribunal has power to compel the person to produce.

65—Power to enlarge scope

(1) The Tribunal may enlarge the scope of proceedings to include questions that are not presently at issue in the proceedings—

(a) in the case of proceedings under the *Return to Work Act 2014*—if, on application and after giving all parties an opportunity to be heard, the Tribunal is satisfied it is in the interests of justice that a question should be determined as part of the proceedings; or

(b) in any case—with the consent of all parties to the proceedings.

(2) In considering whether it is in the interests of justice that a question should be determined as part of the proceedings under subsection (1)(a), the Tribunal must have regard to the principle that all issues in dispute between the parties should be heard and determined in the same proceeding insofar as is just and appropriate.

Part 5—Review and appeals

Division 1—Review and appeals

66—Internal review

(1) A decision of the Tribunal constituted of—

(a) a Commissioner; or

(b) a magistrate (not being a Presidential member); or

(c) 2 or 3 members (but not including a Presidential member),

may, on application under the rules, be reviewed under this section.

(1a) The regulations may exclude or modify the application of subsection (1) insofar as it applies to prescribed classes of decisions under a relevant Act (subject to any provision made by a relevant Act).

(1b) An application for review must be instituted within 1 month of the making of the decision to which the application relates but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the application should be instituted within that period (even if the time for instituting the application has expired).

(1c) The President may determine, in relation to a particular matter, or particular class of matters, how the Tribunal will be constituted for the purposes of a review under this section.

(1d) On a review, the Tribunal will examine the decision of the Tribunal at first instance on the evidence or material before the Tribunal at that time but the Tribunal may, as it thinks fit, allow further evidence or material to be presented to it.

(1e) The Tribunal must, in acting under this section, reach the correct or preferable decision but in so doing must have regard to, and give appropriate weight to, the decision of the Tribunal at first instance.

(2) The Tribunal may, on a review under this section—

(a) affirm the decision that is being reviewed; or

(b) vary the decision that is being reviewed; or

(c) set aside the decision being reviewed and—

(i) substitute a new decision; or

(ii) send the matter back for reconsideration in accordance with any directions or recommendations as the Tribunal acting on review considers appropriate.

67—Appeals

(1) Subject to this section and to any provision of a relevant Act as to the review of, or appeal against, a decision of the Tribunal, an appeal lies against a decision of the Tribunal, other than a decision of a Full Bench, to a Full Bench of the South Australian Employment Court.

(2) The regulations may exclude or modify the application of subsection (1) insofar as the subsection applies to prescribed classes of decisions under a relevant Act (subject to any provision made by a relevant Act).

(3) An appeal under this section will be by way of rehearing.

(4) The Full Bench conducting the appeal may draw inferences of fact from evidence or other material before the Tribunal and may, as it thinks fit, allow further evidence or material to be presented to it.

(5) The Full Bench conducting the appeal may—

(a) affirm the decision appealed against; or

(b) vary the decision appealed against; or

(c) set aside the decision appealed against and, if it thinks fit, return the matter to the Tribunal for reconsideration in accordance with any directions that the Full Bench considers appropriate.

(6) A Full Bench may, on an appeal, make any interim, ancillary or consequential order that the Full Bench considers appropriate (but may only make an order for costs if this Act, or a relevant Act, specifically provides for the making of such an order).

68—Final appeal to Court of Appeal

(1) Subject to subsection (2), an appeal lies on a question of law against a decision of the Full Bench of the Tribunal (including a Full Bench of the South Australian Employment Court) to the Court of Appeal.

(2) An appeal cannot be commenced under this section except with the permission of the Court of Appeal.

(3) On an appeal to the Court of Appeal under this section, the Court of Appeal may—

(a) decide the question of law;

(b) refer the matter back to the Tribunal (or the South Australian Employment Court) with directions the Court of Appeal considers appropriate;

(c) make consequential or related orders (including orders for costs).

Division 2—Related matters

69—Effect of appeal on decision

(1) The commencement of proceedings under this Part does not affect the operation of a decision to which the proceedings relate or prevent the taking of action to implement such a decision.

(2) However, the Tribunal or the relevant court may make an order staying the operation of a relevant decision (including a decision of a relevant decision-maker) until the proceedings are finally decided (on such conditions as may be specified in the order).

(3) The Tribunal or a court may act under subsection (2) on application or on its own initiative.

(4) The Tribunal's power to act under subsection (2) is exercisable only by a Presidential member.

70—Reservation of questions of law

(1) A Full Bench of the Tribunal (including a Full Bench of the South Australian Employment Court) may reserve any question of law arising in any proceedings (including on referral to the Full Bench) for determination by the Court of Appeal.

(2) If a question of law is reserved, the Court of Appeal may determine the question and give any consequential orders or directions considered by the Court to be appropriate to the circumstances of the case.

Part 6—Staff

Division 1—Registrars

71—Registrars

(1) There is to be a principal registrar of the Tribunal (to be known as the ***Registrar***).

(2) There will be 1 or more other registrars of the Tribunal (to be known as ***Deputy Registrars***).

(3) A registrar will be appointed by the Governor on terms and conditions determined by the Governor for a term, not exceeding 5 years, specified in the instrument of appointment (and is, on the expiration of a term of office, eligible for reappointment).

(4) The Governor may remove a person from the office of registrar for—

(a) mental or physical incapacity to carry out official duties satisfactorily; or

(b) neglect of duty; or

(c) dishonourable conduct.

(5) A person ceases to be a registrar if the person—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is removed from office under subsection (4).

(6) If there is a vacancy in the office of a registrar or a registrar is absent or for any other reason is unable to perform the duties of the office, the Minister may appoint a person to act in the relevant position.

(7) The Minister must consult with the President of the Tribunal before an appointment is made under this section.

(8) The office of the Registrar or of a Deputy Registrar may be held in conjunction with another office in the public service of the State or under any other Act.

72—Functions of registrars

(1) The functions of the Registrar are—

(a) to assist the President of the Tribunal in the administration of the Tribunal; and

(b) to be responsible for the registry and records of the Tribunal; and

(c) to undertake responsibility for the day-to-day case management of the Tribunal; and

(d) to constitute the Tribunal to the extent specified under this Act; and

(e) other functions assigned to the Registrar by the President or under the rules of the Tribunal.

(2) The functions of a Deputy Registrar are—

(a) to assist the Registrar in the performance of the Registrar's functions; and

(b) to constitute the Tribunal to the extent specified under this Act; and

(c) other functions assigned to the Deputy Registrar by the Registrar or under the rules of the Tribunal.

(3) A registrar is, in the performance of any function or the exercise of any power, subject to the direction of the President of the Tribunal.

(4) A person affected by an exercise of administrative power by a registrar in relation to a proceeding before the Tribunal may, on application made in a manner and within the time prescribed by the Rules, apply to the Tribunal for a review of that exercise of power.

(5) A Presidential member of the Tribunal may, on an application made under subsection (4), review the exercise of power that is the subject of the application (by holding a hearing or in any other manner the member thinks fit) and make such orders as the member thinks fit with respect to the matter.

(6) No appeal lies against a decision of a Presidential member of the Tribunal under subsection (5).

73—Delegation

(1) A registrar may delegate a function of the registrar under this Act—

(a) to a particular person or committee; or

(b) to the person for the time being performing particular duties or holding or acting in a particular position.

(2) A delegation under subsection (1)—

(a) must be made by instrument in writing; and

(b) may be conditional; and

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

(d) is revocable at will by the registrar.

Division 2—Other staff of Tribunal

74—Other staff of Tribunal

There will be other staff of the Tribunal consisting of persons employed in a public sector agency and selected by the Registrar with the concurrence of the Chief Executive of the Department.

Division 3—Use of services or staff

75—Use of services or staff

The Tribunal may, by arrangement with the relevant body, make use of the facilities, staff or equipment of—

(a) an administrative unit in the Public Service; or

(b) the State Courts Administration Council; or

(c) another public agency or authority; or

(d) another tribunal or court.

Part 7—Miscellaneous

76—Immunities

(1) A member of the Tribunal, mediator, expert or special referee has the same protections, privileges and immunities from liability as a Judge of the Supreme Court.

(2) A member of the staff of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

(3) A person representing a party to proceedings before the Tribunal has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.

(4) A party to proceedings before the Tribunal has the same protection and immunity as a party to proceedings in the Supreme Court.

(5) A person who appears as a witness before the Tribunal or produces books, papers or documents to the Tribunal has the same protection as a witness in proceedings before the Supreme Court.

(6) A person taking evidence on behalf of the Tribunal has, in doing so, the same protections, privileges and immunities as a member of the Tribunal.

77—Protection from liability for torts

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or a relevant Act as a member of the Tribunal or as a member of staff or an officer of the Tribunal.

(2) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).

(3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or a relevant Act had been enacted.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

78—Protection for compliance with Act

(1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.

(2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.

79—Alternative orders and relief

Although a particular form of order or relief is sought by an applicant in proceedings before the Tribunal, the Tribunal may make any other form of order or grant any other form of relief that it considers more appropriate in the circumstances of the case.

80—Power to cure irregularities

(1) Where in proceedings before the Tribunal or a court on appeal it appears to the Tribunal or the court—

(a) that some irregularity has occurred affecting the proceedings or any matter to which the proceedings relate; and

(b) that it would be conducive to the expeditious resolution of the questions of substance at issue between the parties if the powers conferred by this section were exercised,

the Tribunal or court may cure the irregularity by ordering that, subject to the fulfilment of such conditions as may be stipulated by the Tribunal or the court, a requirement of this Act, or of any other Act or law, be dispensed with to the extent necessary for the purpose.

(2) An order under this section does not affect the rights or liabilities of persons who are not parties to the proceedings.

81—Correcting mistakes

(1) The Tribunal may correct a decision it gives or a statement of the reasons it has given for its decision to the extent necessary to rectify—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the decision; or

(d) a defect of form.

(2) The correction may be made—

(a) on a party's application made in accordance with the rules; or

(b) on the Tribunal's own initiative.

82—Tribunal may review its decision if person was absent

(1) In this section—

relevant hearing, in relation to a decision of the Tribunal, means a hearing at which the decision was made or which preceded the making of the decision but does not include a compulsory conciliation conference, a pre-hearing conference or mediation.

(2) A person in respect of whom the Tribunal makes a decision may apply to the Tribunal for a review of the decision if the person did not appear and was not represented at a relevant hearing.

(3) The application has to be made within the time limits specified by, and otherwise in accordance with, the rules.

(4) The rules may limit the number of applications that can be made under this section in respect of the same matter without leave of the Tribunal.

(5) If on hearing the application the Tribunal is satisfied that the applicant had a reasonable excuse for not attending or being represented at the relevant hearing, the Tribunal is to review the decision and may revoke or vary it if the Tribunal considers it appropriate to do so.

(6) For the hearing of the application, the Tribunal is to be constituted by the members by whom it was constituted when it made the decision, if that is practicable.

(7) A review under this section is part of the original proceedings.

83—Tribunal may authorise person to take evidence

(1) The Tribunal may authorise, in writing, a person (whether or not a member of the Tribunal) to take evidence on behalf of the Tribunal for the purposes of any proceedings.

(2) The Tribunal's power under subsection (1) to authorise the taking of evidence is exercisable only by a Presidential member.

(3) The Tribunal may authorise evidence to be taken under this section outside South Australia.

(4) The Tribunal may give directions as to the taking of evidence under this section.

(5) If a person other than a member of the Tribunal is authorised to take evidence, the person has all the powers of a member of the Tribunal in relation to the taking of evidence.

(6) Evidence taken under this section—

(a) is to be regarded as having been given to the Tribunal; and

(b) if taken outside South Australia, is to be regarded as having been given in South Australia.

83A—Transfer of proceedings

(1) The Tribunal may transfer proceedings before the Tribunal to another tribunal or court (being a tribunal or court that also has jurisdiction with respect to the matter) if a member constituting the Tribunal is satisfied or considers that it would be more appropriate or expeditious for the matter to be dealt with by that tribunal or court.

(2) The Supreme Court or a Judge or Master of the Supreme Court may—

(a) order that civil proceedings before the Tribunal be transferred to the Supreme Court; or

(b) transfer civil proceedings in the Supreme Court that lie within the jurisdiction of the Tribunal to the Tribunal.

(3) The District Court or a Judge or Master of the District Court may transfer civil proceedings in the District Court that lie within the jurisdiction of the Tribunal to the Tribunal.

(3a) The Magistrates Court or a Magistrate may transfer civil proceedings in the Magistrates Court that lie within the jurisdiction of the Tribunal to the Tribunal.

(4) If proceedings are transferred to another tribunal or court under subsection (1) or (2)(a)—

(a) a registrar or other member of the staff of the Tribunal must forward to the other tribunal or court—

(i) a file containing all documents filed in the Tribunal in the proceedings; and

(ii) a transcript of any evidence taken before the Tribunal in the proceedings; and

(iii) copies of any order made by the Tribunal in relation to the proceedings; and

(b) the tribunal or court may—

(i) receive in evidence any transcript of any evidence taken before the Tribunal in the proceedings and draw any conclusions of fact from that evidence that appear proper; and

(ii) adopt any findings or decision of the Tribunal that may be relevant to proceedings before the tribunal or court; and

(iii) adopt or make any decision, direction, determination or order in relation to the proceedings; and

(iv) continue any proceedings as if they had been commenced before or in the tribunal or court; and

(v) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(5) If proceedings are transferred to the Tribunal under subsection (2)(b), (3) or (3a), the Tribunal may—

(a) receive in evidence any transcript of any evidence taken before the relevant court in the proceedings and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or decision of the relevant court that may be relevant to the proceedings before the Tribunal; and

(c) adopt or make any decision, direction, determination or order in relation to the proceedings; and

(d) continue any proceedings as if they had been commenced before the Tribunal; and

(e) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

84—Miscellaneous provisions relating to legal process and service

(1) Any process of the Tribunal may be issued, served or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

(3) If it is not practicable to serve any process, notice or other document relating to any proceedings in the manner otherwise prescribed or contemplated by law, the Tribunal may, by order—

(a) provide for service by post, or in any other way (including by substituted service) authorised by the regulations; or

(b) make any other provision that may be necessary or desirable for service.

(4) Any process, notice or other document served in accordance with an order under subsection (3) will, despite any other law, be taken to have been duly served.

(5) A registrar is expressly authorised to make an order under subsection (3).

85—Proof of decisions and orders of Tribunal

An apparently genuine document purporting to be a copy of a decision or order of the Tribunal and to be certified as such by a registrar will be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of a decision or order of the Tribunal.

86—Enforcement of decisions and orders of Tribunal

(1) If the Tribunal constituted as the South Australian Employment Court makes a monetary order, the order is enforceable, and any action may be taken in respect of the order, as if it were a judgment or order of the appropriate court.

(1a) If the Tribunal constituted as an industrial relations commission makes a monetary order, the amount specified in the order may be recovered in the appropriate court as if it were a debt.

(1b) No court fees are payable in relation to proceedings in an appropriate court in respect of a monetary order made by the Tribunal, including proceedings under the *Enforcement of Judgments Act 1991*.

(1c) Where, in accordance with a relevant Act, a person who is not a legal practitioner is entitled to act as a representative of a party before SAET, that person may also act as a representative of that party in any proceedings under the *Enforcement of Judgments Act 1991* before an appropriate court with respect to an order made by SAET.

(2) A person who contravenes or fails to comply with an order of the Tribunal (other than a monetary order) is guilty of an offence.

Maximum penalty: $50 000 or imprisonment for 2 years.

(3) In this section—

appropriate court means—

(a) in relation to an order of the Tribunal that is a monetary order for an amount that does not exceed the amount that represents the jurisdictional limit of the Magistrates Court for a monetary claim founded on contract—the Magistrates Court;

(b) in any other case—the District Court;

monetary order includes a judgment that provides for the payment of an amount of money.

87—Accessibility of evidence

(1) Subject to this section, the Tribunal may, on application by any member of the public, allow the applicant to inspect or obtain a copy of—

(a) any process relating to proceedings and forming part of the Tribunal's records;

(b) a transcript of evidence taken by the Tribunal in any proceedings;

(c) any documentary material admitted into evidence in any proceedings;

(d) any decision or order given or made by the Tribunal;

(e) any other material of a prescribed kind.

(2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Tribunal:

(a) material that was not taken or received in open court;

(b) material the disclosure of which would be contrary to a direction or order of the Tribunal given under another provision of this or any other Act;

(c) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;

(d) material of a class prescribed by the regulations.

(3) The Tribunal may permit inspection or copying of material referred to in subsection (1) or (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

(4) A decision by the Tribunal on an application under this section is administrative and is final and not subject to any form of review.

(5) The Tribunal may charge a fee, fixed by regulation, for inspection or copying of material under this section.

88—Costs of proceedings

(1) In this section—

costs of proceedings means costs of, or incidental to, any proceedings of the Tribunal, other than the costs of a party.

(2) The Tribunal may order that all or any of the costs of proceedings be paid by a party.

(3) If the matter that is the subject of the proceeding comes within the Tribunal's review jurisdiction, the Tribunal cannot make an order under this section against a party unless—

(a) the party brought or conducted the proceedings frivolously or vexatiously; or

(b) the Tribunal is acting in prescribed circumstances.

88A—Production of persons held in custody

If the Tribunal requires the attendance before it of any person who is held in custody in the State, the Tribunal may—

(a) issue a summons or a notice requiring the custodian to produce that person before the Tribunal at a nominated time and place; or

(b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring the person before the Tribunal.

89—Annual report

(1) The President of the Tribunal must on or before 31 October in each year make a report to the Minister on the administration and operation of the Tribunal during the previous financial year.

(2) The Minister must within 12 sitting days after receiving a report under this section cause copies of the report to be laid before both Houses of Parliament.

(3) The report must include any information prescribed by the regulations.

90—Additional reports

The President of the Tribunal must, at the request of the Minister, report to the Minister on any matter relevant to the administration or operation of the Tribunal.

91—Disrupting proceedings of Tribunal

(1) A person who—

(a) wilfully insults a member or officer of the Tribunal, during a sitting of the Tribunal or in going to or returning from the Tribunal; or

(b) wilfully disturbs or interrupts proceedings of the Tribunal; or

(c) misbehaves in any other way before the Tribunal; or

(d) wilfully disobeys an order or direction of the Tribunal,

commits a contempt of the Tribunal.

(2) If a party to proceedings before the Tribunal—

(a) contravenes or fails to comply with an order in the nature of an interlocutory order or an order to do, or refrain from, a particular act; and

(b) makes no reasonable and adequate excuse to the Tribunal for the contravention or non-compliance,

the Tribunal may (without limiting its powers to deal with the matter in any other way) order that the party be not heard, or further heard, in the proceedings, or impose another procedural disability or civil penalty the Tribunal considers appropriate to the circumstances of the case.

(3) Before acting under subsection (2), the Tribunal must give the relevant party an opportunity to be heard on the question.

91A—Punishment of contempts

(1) A contempt of the Tribunal is a summary offence punishable by a maximum fine of $10 000 or imprisonment for a maximum term of 6 months.

(2) The jurisdiction to deal with an offence against subsection (1) is vested in the South Australian Employment Court.

(3) If a contempt is committed in the face of the Tribunal, the matter may be dealt with immediately (without the necessity of laying a charge or other formality) and the South Australian Employment Court may proceed to convict and fine the offender as it thinks fit.

91B—Offences

An offence against a provision of this Act lies within the criminal jurisdiction of the South Australian Employment Court.

92—Rules

(1) Rules of the Tribunal may be made—

(a) regulating the business of the Tribunal and the duties of the various members and staff of the Tribunal; and

(b) authorising the registrars and other staff of the Tribunal to exercise powers with respect to proceedings before the Tribunal and providing for the internal review of specified classes of decisions in specified circumstances; and

(c) regulating the practice and procedure of the Tribunal; and

(d) imposing obligations on persons seeking to commence proceedings before the Tribunal to take any step, including to give a notification to another person or to provide any specified information; and

(e) providing for the service of applications and documents; and

(f) imposing obligations on parties to proceedings before the Tribunal to disclose to each other the contents of expert reports or other material of relevance to the proceedings before or in connection with the hearing of the proceedings; and

(g) regulating the referral of a matter to mediation, the conduct of mediations or the referral of questions for investigation and report by an expert or referee; and

(h) regulating the form in which evidence may be taken; and

(i) restricting or prohibiting certain classes of persons from appearing as representatives in proceedings before the Tribunal; and

(j) providing for the Tribunal to waive any procedural requirement; and

(k) regulating costs and providing for the assessment and settling of costs; and

(ka) providing that a rule made pursuant to paragraph (k) is to prevail over an inconsistent provision of a relevant Act; and

(l) providing for witness fees; and

(la) providing for the suspension of inactive proceedings; and

(m) providing for other matters relating to the management, conduct or settlement of proceedings before the Tribunal; and

(n) dealing with any other matters necessary or expedient for the effective and efficient operation of the Tribunal.

(2) The power to make rules under this section includes the power to make rules in respect of any jurisdiction conferred on the Tribunal by a relevant Act.

(3) Rules of the Tribunal may be made by the President and a Deputy President of the Tribunal after consultation with the Minister.

(4) The rules take effect from the date of publication in the Gazette or a later date specified in the rules.

(5) Except to the extent specified in subsection (1)(ka), the rules must be consistent with the regulations, and with any relevant Act.

93—Regulations

(1) The Governor may make such regulations as are contemplated by this Act or a relevant Act, or as are necessary or expedient for the purposes of this Act or a relevant Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) provide information to be included in registers to be kept for the purposes of this Act; and

(b) prescribe matters relevant to the practice or procedures of the Tribunal; and

(c) prescribe and provide for the payment of fees in relation to proceedings before the Tribunal; and

(d) prescribe penalties not exceeding $5 000 for contravention of, or non-compliance with, any regulation; and

(e) make provisions of a saving or transitional nature consequent on the vesting of jurisdiction on the Tribunal under this or another Act.

(3) The regulations may provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the President of the Tribunal or another prescribed person.

(4) A regulation under subsection (2)(e) may (without limiting that subsection)—

(a) operate in addition to any saving or transitional provision enacted under another Act in connection with the vesting of jurisdiction in the Tribunal; and

(b) operate so as to modify the operation or effect of another Act insofar as may be expedient in connection with the transfer of jurisdiction to the Tribunal from another entity; and

(c) take effect from the day on which jurisdiction is vested in the Tribunal under another Act (including so as to provide for the retrospective operation of the regulations).

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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 this Act (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.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2014	17	*South Australian Employment Tribunal Act 2014*	6.11.2014	1.1.2015 (*Gazette 18.12.2014 p6869*) except ss 5—9, 18—23, Pts 3—5, ss 79—89 & 91—1.7.2015 (*Gazette 25.6.2015 p3076*)
2016	63	*Statutes Amendment (South Australian Employment Tribunal) Act 2016*	8.12.2016	Pt 2 (ss 4—41)—1.7.2017 (*Gazette 16.5.2017 p1221*)
2017	16	*South Australian Employment Tribunal (Miscellaneous) Amendment Act 2017*	23.5.2017	Pt 2 (s 4)—1.7.2017 immediately after Pts 8 & 20 of 63/2016 (*Gazette 27.6.2017 p2620*)
2017	70	*Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017*	12.12.2017	Pt 11 (ss 22, 24, 26 & 27)—1.7.2017; (ss 23 & 25)—12.12.2017: s 2(1), (2)
2018	42	*South Australian Employment Tribunal (Miscellaneous) Amendment Act 2018*	13.12.2018	13.12.2018
2019	45	*Supreme Court (Court of Appeal) Amendment Act 2019*	19.12.2019	Sch 1 (cll 83 to 85)—1.1.2021 (*Gazette 10.12.2020 p5638*)
2021	2	*South Australian Employment Tribunal (Costs) Amendment Act 2021*	11.2.2021	1.7.2017
2024	26	*Statutes Amendment (South Australian Employment Tribunal) Act 2024*	5.9.2024	Pt 5 (s 50)—31.10.2024; ss 42 to 49 & 51 to 56—1.12.2024 (*Gazette 31.10.2024 p4038*)
2024	49	*Fair Work (Registered Associations) Amendment Act 2024*	14.11.2024	Sch 1 (cl 1)—uncommenced
2025	**43**	***Fair Work (Worker Entitlements) Amendment Act 2025***	**30.10.2025**	**Sch 1 (cll 1 & 2)—1.1.2026 (*Gazette 11.12.2025 p4823*)**

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*1.7.2017*
s 3		
s 3(1)		
Commissioner	inserted by 63/2016 s 4(1)	1.7.2017
conciliation officer	*deleted by 63/2016 s 4(1)*	*1.7.2017*
decision	inserted by 63/2016 s 4(1)	1.7.2017
Department	substituted by 63/2016 s 4(2)	1.7.2017
Industrial Relations Court	*deleted by 63/2016 s 4(3)*	*1.7.2017*
relevant Act	amended by 70/2017 s 22	1.7.2017
Tribunal	amended by 63/2016 s 4(4)	1.7.2017
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 70/2017 s 23	12.12.2017
	amended by 42/2018 s 3	13.12.2018
s 4(2)	inserted by 70/2017 s 23	12.12.2017
Pt 2		
Pt 2 Div 1		
s 5		
s 5(1)	s 5 redesignated as s 5(1) by 63/2016 s 5	1.7.2017
s 5(2)—(4)	inserted by 63/2016 s 5	1.7.2017
s 6	substituted by 63/2016 s 6	1.7.2017
s 6(2)	amended by 26/2024 s 42(1)	1.12.2024
s 6(2a)	inserted by 26/2024 s 42(2)	1.12.2024
note	**inserted by 43/2025 Sch 1 cl 1**	**1.1.2026**
s 6A	inserted by 63/2016 s 6	1.7.2017
s 6A(4)	amended by 2/2021 s 4	1.7.2017
s 6A(6)	amended by 26/2024 s 43	1.12.2024
s 6AB	inserted by 42/2018 s 4	13.12.2018
s 6B	inserted by 63/2016 s 6	1.7.2017
s 7A	inserted by 63/2016 s 7	1.7.2017
Pt 2 Div 3		
Pt 2 Div 3 Subdiv 1		
s 9	amended by 63/2016 s 8(1), (2)	1.7.2017
Pt 2 Div 3 Subdiv 2		
s 10	substituted by 63/2016 s 9	1.7.2017
s 12		

s 12(1)	amended by 63/2016 s 10(1)	1.7.2017
s 12(2) and (3)	substituted by 63/2016 s 10(2)	1.7.2017
s 12(4)—(6)	inserted by 63/2016 s 10(2)	1.7.2017
Pt 2 Div 3 Subdiv3		
s 12A	inserted by 63/2016 s 11	1.7.2017
s 13	substituted by 63/2016 s 12	1.7.2017
s 13(13)	amended by 26/2024 s 44	1.12.2024
Pt 2 Div 3 Subdiv 5		
heading	substituted by 63/2016 s 13	1.7.2017
s 16		
s 16(1)	amended by 63/2016 s 14(1)	1.7.2017
s 16(2)	amended by 63/2016 s 14(1), (2)	1.7.2017
s 16(3)	amended by 63/2016 s 14(1)	1.7.2017
s 16(4)	amended by 63/2016 s 14(2)	1.7.2017
s 16(6)—(10)	amended by 63/2016 s 14(1)	1.7.2017
s 17		
s 17(1) and (2)	amended by 63/2016 s 15(1)	1.7.2017
s 17(4) and (5)	amended by 63/2016 s 15(1)—(3)	1.7.2017
s 18		
s 18(1), (2) and (4)	amended by 63/2016 s 16	1.7.2017
Pt 2 Div 3A	inserted by 63/2016 s 17	1.7.2017
Pt 2 Div 4		
s 19		
s 19(1a)	inserted by 63/2016 s 18(1)	1.7.2017
s 19(3)	amended by 63/2016 s 18(2)	1.7.2017
	substituted by 26/2024 s 45(1)	1.12.2024
s 19(4a)	inserted by 26/2024 s 45(2)	1.12.2024
s 19(5a)	inserted by 63/2016 s 18(3)	1.7.2017
s 20		
s 20(3)	amended by 63/2016 s 19	1.7.2017
s 22		
s 22(1)	amended by 63/2016 s 20(1)	1.7.2017
s 22(2)	amended by 63/2016 s 20(2)	1.7.2017
	amended by 45/2019 Sch 1 cl 83	1.1.2021
s 22(3)	amended by 63/2016 s 20(3)	1.7.2017
Pt 2 Div 5		
s 23	*deleted by 63/2016 s 21*	*1.7.2017*
Pt 2 Div 6	inserted by 63/2016 s 22	1.7.2017
Pt 2 Div 7	inserted by 63/2016 s 22	1.7.2017
Pt 2 Div 8	inserted by 70/2017 s 24	1.7.2017
Pt 3		
Pt 3 Div 1		
heading	inserted by 63/2016 s 23	1.7.2017

s 26J	inserted by 63/2016 s 24	1.7.2017
s 27		
s 27(1)	substituted by 63/2016 s 25(1)	1.7.2017
s 27(6) and (7)	substituted by 63/2016 s 25(2)	1.7.2017
Pt 3 Div 2	inserted by 63/2016 s 26	1.7.2017
Pt 4		
s 32		
s 32(1a)	inserted by 63/2016 s 27	1.7.2017
s 34		
s 34(1)	amended by 63/2016 s 28(1)	1.7.2017
s 34(2)	substituted by 63/2016 s 28(2)	1.7.2017
s 43		
s 43(5a)	inserted by 26/2024 s 46(1)	1.12.2024
s 43(7) and (8)	substituted by 26/2024 s 46(2)	1.12.2024
s 43(11)	amended by 26/2024 s 46(3)	1.12.2024
s 44	amended by 26/2024 s 47	1.12.2024
s 45		
s 45(3)	inserted by 16/2017 s 4	1.7.2017
s 49		
s 49(1a) and (1b)	inserted by 63/2016 s 29	1.7.2017
s 51		
s 51(1a)	**inserted by 43/2025 Sch 1 cl 2**	**1.1.2026**
s 51(2a)	inserted by 49/2024 Sch 1 cl 1	uncommenced—not incorporated
s 51(4)	inserted by 26/2024 s 48	1.12.2024
s 52	substituted by 63/2016 s 30	1.7.2017
s 53		
s 53(1)	amended by 63/2016 s 31	1.7.2017
s 65	substituted by 26/2024 s 49	1.12.2024
Pt 5		
Pt 5 Div 1		
s 66		
s 66(1)	substituted by 63/2016 s 32(1)	1.7.2017
s 66(1a)—(1e)	inserted by 63/2016 s 32(1)	1.7.2017
s 66(2)	amended by 63/2016 s 32(2), (3)	1.7.2017
s 67	substituted by 63/2016 s 33	1.7.2017
s 67(6)	amended by 26/2024 s 50	31.10.2024
s 68		
s 68(1)	amended by 63/2016 s 34(1)	1.7.2017
	amended by 45/2019 Sch 1 cl 84(1)	1.1.2021
s 68(2)	amended by 45/2019 Sch 1 cl 84(2)	1.1.2021
s 68(3)	amended by 63/2016 s 34(2)	1.7.2017
	amended by 45/2019 Sch 1 cl 84(3), (4)	1.1.2021

Pt 5 Div 2		
s 69		
s 69(4)	amended by 63/2016 s 35	1.7.2017
s 70		
s 70(1)	amended by 63/2016 s 36	1.7.2017
	amended by 45/2019 Sch 1 cl 85(1)	1.1.2021
s 70(2)	amended by 45/2019 Sch 1 cl 85(2)	1.1.2021
Pt 6		
s 72		
s 72(4)—(6)	inserted by 26/2024 s 51	1.12.2024
Pt 7		
s 83A	inserted by 63/2016 s 37	1.7.2017
s 83A(3a)	inserted by 26/2024 s 52(1)	1.12.2024
s 83A(5)	amended by 26/2024 s 52(2)	1.12.2024
s 86		
s 86(1)	substituted by 26/2024 s 53	1.12.2024
s 86(1a)—(1c)	inserted by 26/2024 s 53	1.12.2024
s 86(3)		
monetary order	inserted by 63/2016 s 38	1.7.2017
s 88A	inserted by 63/2016 s 39	1.7.2017
s 91	substituted by 63/2016 s 40	1.7.2017
s 91(2)	amended by 26/2024 s 54	1.12.2024
ss 91A and 91B	inserted by 63/2016 s 40	1.7.2017
s 92		
s 92(1)	amended by 70/2017 s 25(1)	12.12.2017
	amended by 26/2024 s 55	1.12.2024
s 92(5)	amended by 70/2017 s 25(2)	12.12.2017
s 93		
s 93(2)	amended by 70/2017 s 26	1.7.2017

Transitional etc provisions associated with Act or amendments

Statutes Amendment (South Australian Employment Tribunal) Act 2016

41—Transitional provisions

(1) In this section—

principal Act means the *South Australian Employment Tribunal Act 2014*;

relevant day means the day on which this section comes into operation;

Tribunal means the South Australian Employment Tribunal.

(2) The person holding office as President of the Tribunal (other than on an acting basis) immediately before the relevant day—

(a) will continue to hold that office and will, if not already a judge of the District Court, be appointed as a judge of the District Court by force of this subsection; and

(b) will hold office taking into account the operation of section 10(2) of the principal Act, and subject to the operation of section 10(8) of the principal Act, as enacted by this Act.

(3) A person holding office as a Deputy President of the Tribunal immediately before the relevant day—

(a) will continue to hold that office; and

(b) will hold that office subject to the operation of section 13(11) of the principal Act as enacted by this Act—

(i) in the case of a judge of the District Court (including as a result of an appointment under subsection (4))—as if the person had been appointed under section 13(1)(a) of the principal Act as enacted by this Act; and

(ii) in the case of a magistrate—as if the person had been appointed under section 13(1)(b) of the principal Act as enacted by this Act.

(4) A Deputy President of the Tribunal who, immediately before the relevant day—

(a) was not a judge of the District Court; and

(b) was not a magistrate,

will be appointed as a judge of the District Court by force of this subsection.

(5) A person who was, immediately before the relevant day, a conciliation officer of the Tribunal will continue in office as a Commissioner of the Tribunal on the same terms and conditions as applied to the person immediately before the relevant day.

Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017

27—Transitional provisions

(1) In this section—

decision, of the Industrial Relations Court includes a direction, determination or order of the Industrial Relations Court;

decision, of the Tribunal, has the same meaning as in the principal Act;

Industrial Relations Court means the Industrial Relations Court as in existence immediately before the commencement of section 69 of the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*;

principal Act means the *South Australian Employment Tribunal Act 2014*;

relevant day means the day on which this section comes into operation;

Tribunal means the South Australian Employment Tribunal.

(2) A decision (or purported decision) of the Industrial Relations Court made in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision of the Tribunal.

(3) A right (or purported right) to bring proceedings in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* before the relevant day (but not so exercised before that day) will be exercised as if Part 2 Division 8 of the principal Act had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal.

(4) Any proceedings that were before (or purportedly before) the Industrial Relations Court in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been validly commenced before the Tribunal.

(5) The Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before (or purportedly before) the Industrial Relations Court, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations (or purported findings or determinations) of the Industrial Relations Court that may be relevant to proceedings before the Tribunal; and

(c) adopt any determination (or purported determination), or make any determination, in relation to proceedings before (or purportedly before) the Industrial Relations Court before the relevant day (including so as to make a determination in relation to proceedings fully heard, or purportedly fully heard, before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(6) Nothing in this section affects a right of appeal to the Supreme Court against a decision, direction or order of the Full Court of the Industrial Relations Court made or given (or purportedly made or given) before the relevant day.

(7) A reference in any instrument or agreement made (or purportedly made) in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* to the Industrial Relations Court will, unless the context otherwise requires, be taken to be a reference to the Tribunal.

Statutes Amendment (South Australian Employment Tribunal) Act 2024

56—Transitional provisions

(1) Section 6A of the principal Act, as amended by section 43 of this Act, applies in relation to proceedings commenced in the South Australian Employment Court after the commencement of section 43 of this Act.

(2) Section 19(3) of the principal Act, as substituted by section 45(1) of this Act, applies in relation to proceedings commenced before a Full Bench of the South Australian Employment Tribunal after the commencement of section 45(1) of this Act.

(3) Section 19(4a) of the principal Act, as inserted by section 45(2) of this Act, applies in relation to proceedings commenced before the South Australian Employment Tribunal after the commencement of section 45(2) of this Act.

(4) Section 51(4) of the principal Act, as inserted by section 48 of this Act, applies, on and from the commencement of section 48 of this Act, to any proceedings regardless of when the communication or document referred to in section 51(4) occurred or was created (as the case requires).

(5) Section 65 of the principal Act, as substituted by section 49 of this Act, applies, on and from the commencement of section 49 of this Act, to any proceedings regardless of whether the proceedings were commenced before or after that commencement.

(6) Section 72(4) and (5) of the principal Act, as inserted by section 51 of this Act, apply to an exercise of administrative power occurring after the commencement of section 51 of this Act.

(7) In this section—

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

Historical versions

1.7.2017

12.12.2017

13.12.2018

1.1.2021

31.10.2024

1.12.2024