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## The South Australian Employment Tribunal

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In August 2014 Minister John Rau introduced a Bill into Parliament to establish a new Tribunal to deal with employment related matters in South Australia. The *South Australian Employment Tribunal Act 2014* passed Parliament, and the South Australian Employment Tribunal (“SAET”) will be operational from 1 July 2015.

This date of operation will coincide with the commencement of the Return to Work scheme which overhauls the entire South Australian workers compensation system. Before 1 July 2015, parties to a workers compensation dispute can take their matter to the Workers Compensation Tribunal. However from 1 July 2015, the Workers Compensation Tribunal will cease to exist and parties will bring their matters before the SAET.

When Minister Rau introduced the SAET legislation into Parliament, he indicated that the main objectives of the new Tribunal are to “provide efficient and cost-effective processes for all parties involved, act with as little formality and technicality as possible and be flexible in the way in which it conducts its business.” Furthermore, the Minister indicated that the “new Return to Work scheme is designed with less moving parts [compared to the Workers Compensation Tribunal] and should provide injured workers and their employers with greater certainty regarding their entitlements and obligations under the legislation”.

Theoretically, disputes and law suits should decrease under the new scheme and matters should be capable of resolution without the need to pursue litigation through the Tribunal processes.

Whether such certainty, efficiency and cost effectiveness will occur is unknown; the benefits of the SAET may not be realised for years to come. As with any new scheme or legislation, it will take the lawyers and parties a while to fully come to terms with the intricacies and complexities, and it is inevitable that difficulties will be encountered in the short term.

Importantly, if legal disputes commence in the Workers Compensation Tribunal before 1 July 2015, the disputes will be continued and completed under the *Workers Rehabilitation and Compensation Act 1986* rather than the new Return to Work scheme.

## **Who will lead the South Australian Employment Tribunal?**

The SAET will be led by a President, supported by one or more Deputy Presidents, Magistrates and Conciliators. The President is in charge of administering and managing the SAET and can independently perform his/her functions without interference from the Minister. The President's main roles will include:

- ensuring that the SAET operates efficiently and effectively;
- providing directions regarding SAET procedures and practices;
- ensuring other members of the SAET are appropriately trained;
- providing general leadership and guidance to SAET members and staff.

The President is also a member of the SAET and can preside over hearings and disputes.

The President will be able to establish various 'streams' or lists that reflect the areas of jurisdiction of the SAET. At this stage, it is too early to know precisely how these streams will operate, and whether they will enhance the efficiency and cost effectiveness of litigation.

Deputy Presidents will assist the President in the management of business and members of the SAET.

## **Will there still be Conciliation Officers?**

Like with the Workers Compensation Tribunal, the SAET will comprise of Conciliation Officers who are public servants with extensive knowledge and expertise about the types of matters to be brought before the SAET. The Conciliation Officer will hear disputes at first instance and will promote and attempt to facilitate a resolution of the dispute without it being escalated further. The purpose of a Conciliation Conference is to identify, clarify and narrow the issues in dispute.

## **How does the Conciliation process operate?**

The Conciliation process is not supposed to run for a prolonged period of time. In fact the law stipulates that the proceedings constituting a Conciliation Conference should not run over a period of six weeks unless the member presiding over the Conciliation Conference considers that good reasons exist to extend the time. If Conciliation does not result in a resolution of the dispute, the dispute must be referred on for hearing and determination.

## **How will they deal with disputes in the new South Australian Employment Tribunal?**

Disputes brought before the SAET will be dealt with as a review of the original decision. This means that the SAET can hear the dispute regarding the original decision afresh by way of a re-hearing. There are obligations on the original decision maker to assist the SAET so the SAET can properly review the decision.

The SAET can and will adopt an inquisitorial approach which means it can take it upon itself to gather more evidence to assist with its decision-making, rather than simply relying on the evidence presented by the parties to the dispute. The SAET will even have the power to enter any land or building and carry out any inspection that the SAET considers relevant to a proceeding before it. It is an offence to obstruct the SAET (or someone instructed by the SAET) from exercising its power.

The SAET can also refer specific questions to experts to assist the SAET with its decision making. For example, it can refer a specific question to a medical expert, even if the parties have not relied on this particular expert to prepare their respective cases.

The SAET can even refer questions in proceedings to a 'special referee' for that person to decide a question or give an opinion. This is a new procedure, and it is not known how this will operate from 1 July 2015.

## **What is alternative dispute resolution in this new Tribunal?**

An important aspect of the new SAET is an emphasis on 'alternative dispute resolution'. At any time including during the Conciliation stage, the SAET can compel parties to attend compulsory conferences and refer disputes to mediation (mediation does not exist within the Workers Compensation Tribunal).

Decisions of the SAET can be appealed to the Full Court of the Industrial Relations Court or to a single judge of the Industrial Relations Court, depending on the type of appeal.

Overall, the South Australian Employment Tribunal has greater functions and powers compared with the Workers Compensation Tribunal, and the SAET may become a forum for other employment related disputes and actions. However, the directions, practices and Rules of the SAET are still being developed, so there are still many important aspects of the SAET that remain unknown to those of us who work within the field of workers compensation.

We hope to keep you informed over the months following the commencement of the South Australian Employment Tribunal.

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*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*