

Review of the Proposed approach to managing Return to Work Act 2014 cases at hearing and determination

10 December 2021

The Proposed Approach

The *Proposed approach to managing Return to Work Act 2014 cases at hearing and determination* was circulated in September 2019.

In early 2020, due to the impact of the global Covid-19 pandemic, any potential changes in line with the Proposed Approach were put on hold.

In December 2020, it was advised that the Proposed Approach would not be implemented as any concerns over the timely listing of trials and of a backlog of cases had largely dissipated. It was acknowledged then, that in the ordinary course when parties were properly ready to have their case listed in a callover, a trial date within the optimal period of three to six months hence was able to be provided. As such there was at that time, no apparent backlog of cases at hearing and determination.

In the year since then, SAET has continued to accommodate trial dates within the optimal period.

Review

In July 2021, the SAET Case Management Working Group reconvened to conduct a review of case management practices at hearing and determination. After conducting its review, the Working Group highlighted its findings that:

1. There are several significant factors affecting the Proposed Approach including:
 - a. the passage of time with respect to the application of transitional provisions of the *Return to Work Act 2014*;

- b. significant judgments of the Full Court of the Supreme Court and of the Court of Appeal;
 - c. generally, a more consistent approach by litigants to the question of causation under s 7 of the RTW Act;
 - d. SAET's response to the pandemic and in particular, its increased use of telephone and audio-visual (AV) technology.
2. SAET's response to the pandemic was a significant shift in working practices and resulted in efficiencies for SAET and stakeholders. The responses have been well received and enjoyed almost total support. Accordingly, it was ill-opportune to introduce further significant structural changes.
 3. Hearing dates, within the optimal period of three to six months from when parties are properly ready to have their case listed, continue to be accommodated.
 4. Data about the progress of cases to resolution at hearing and determination indicates that the number of cases in callovers not being reached is consistently less than 1%.

Accordingly, the Working Group recommended that the Proposed Approach not be implemented.

In the alternative, the Working Group recommended formalising the continued use of telephone and AV technology in SAET, in order to provide certainty and consistency across the jurisdiction, whilst also maintaining the discretion for Presidential members and Commissioners.

Practice Direction 20 – Telephone and Audio-Visual hearings

In line with the recommendations of the Working Group, Practice Direction 20 has been updated to provide more details as to the use of telephone and AV technology.

The current and continued practice of SAET will be that when AV technology is utilised, Microsoft Teams (MS Teams) will be the preferred format.

MS Teams Conciliation Pilot Project in 2022

In 2022, SAET will conduct the *MS Teams Conciliation Pilot Project*. The aim of this pilot project is to understand the benefits and challenges of Commissioners conducting conciliation conferences by AV technology. In that regard, the practical experiences and user feedback obtained in the pilot project will better inform our future decisions as to the use of AV technology.

Commissioners Williams, Sullivan and McDonald will undertake the pilot project, which will commence in February 2022. The Commissioners aim to conduct a minimum of 30 Return to Work Act Conciliation conferences during the pilot project and evaluations of the format will be conducted after each AV conference. The Commissioners will identify appropriate cases for inclusion in the pilot project and will liaise with the parties in that regard.

Trial of MS Teams for the President's directions hearings in 2022

For some time, directions hearings at hearing and determination have been conducted by telephone by Presidential members. Directions hearings have also proceeded with personal attendances.

From early 2022, the President will conduct a trial of selected directions hearings by AV format. The purpose of the trial is to ascertain whether MS Teams can be as efficacious for directions hearing as the telephone format has been. If so, consideration will be given to the wider use of MS Teams.

The parties will be advised prior to the selected directions hearing whether it will be conducted by MS Teams.

The Honourable Justice Steven Dolphin



President

South Australian Employment Tribunal