

Alert

WORKERS COMPENSATION & SELF INSURANCE

Dealing with Self-Represented Litigants in the South Australian Employment Tribunal

By Patrick Walsh & Tiffany Walsh

The recent decision of the Full Bench of the South Australian Employment Tribunal in [*Richards v Little Company of Mary Health Care* \[2018\] SAET 186](#) concerned a self-represented litigant, and whether the Deputy President who heard the initial hearing in the matter satisfied his duty to the self-represented litigant.

The Appellant, who was the Applicant in the initial hearing, was largely self-represented before the Deputy President. She, in the Appeal before the Full Bench (where she was also self-represented), asserted that the Deputy President did not fulfil his duty to her as a self-represented litigant.

The Full Bench noted that during the initial hearing His Honour granted multiple adjournments to the Appellant in order to assist her in putting her case. Further, the Full Bench noted that His Honour provided assistance to the Appellant on multiple occasions during the hearing by way of explaining processes and procedures that she was required to follow, as well as intervening in the proceedings in order to assist the Appellant.

The Full Bench concluded that His Honour “*maintained impartiality and neutrality throughout the proceedings*”, and as such rejected the Appellant’s argument that His Honour failed in his duty towards her as a self-represented litigant.

President Justice Dolphin helpfully set out nine principles that Tribunal members should follow when dealing with self-represented litigants. These principles are:

1. *The paramount duty is to ensure a fair trial, in accordance with law, for all parties.*
2. *A self-represented litigant is to be assisted so as to balance any disadvantage that person may suffer from the lack of representation. An assessment is to be made as to the degree of assistance required.*
3. *In redressing any imbalance, the other party(s) to the litigation are not to be disadvantaged.*
4. *To ensure procedural fairness, necessary and appropriate steps should be taken to explain the relevant processes and procedures to the self-represented litigant.*
5. *The duty to provide procedural fairness does not extend to providing advice as to how the self-represented litigant should exercise his or her rights.*
6. *The duty to provide procedural fairness does not extend to conducting the self-represented litigant’s case for them.*

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7. *Assistance to the self-represented litigant may be in the form of necessary intervention, during the proceedings, to ensure a fair trial.*
8. *The self-represented litigant may be reprimanded for unreasonable behaviour.*
9. *Impartially and neutrality are to be maintained at all times; the touchstone is fairness.*

When people are dealing with self-represented litigants at the Tribunal, we suggest that they have these principles in mind in order to assist the Tribunal in meeting their obligations to the self-represented litigant.

If you would like more information in relation to duties towards self-represented litigants, please contact us for advice and assistance.



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