

SACAT 2017 STATUTORY REVIEW

Government of South Australia's response
to the independent review of SACAT



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Foreword

It has been a little over two years since the South Australian Civil and Administrative Tribunal (SACAT) opened its doors to the public to help people resolve issues in a range of civil and administrative law disputes. At that time, matters previously heard by the Guardianship Board, Residential Tenancies Tribunal and Housing Appeal Panel became the jurisdiction of SACAT, along with a number of appeals previously dealt with by the District Court.

Section 96 of the *South Australian Civil and Administrative Tribunal Act 2013* (the Act) requires that a review of the tribunal be conducted as soon as practicable after the tribunal's second year of operation. The review includes an assessment of tribunal performance, its success in meeting its main objectives and consideration of whether an extension of the jurisdiction of the tribunal is advantageous. The government commissioned retired Supreme Court Justice, the Hon David Bleby QC to undertake the SACAT 2017 Statutory Review. The findings provide the government with an opportunity to further strengthen its commitment to access to justice for South Australians.

It is pleasing that the review acknowledged the efforts of staff and members to overcome initial operational challenges and generally deliver on SACAT's key objectives. Our thanks go to all the people who have worked tirelessly to help SACAT operate on a daily basis, including the pool of volunteers whose contribution has been particularly helpful for those who find it difficult to deal with tribunal matters.

The review found that SACAT is an evolving organisation and that its continued effective operations and expansion depend, at least in part, on appropriate funding and resources. We welcome the findings of the review as a catalyst for implementing legislative and organisational changes and improvements including the broadening of SACAT's jurisdiction.

Drawing on the analysis and feedback, the review contains 51 recommendations on how to improve SACAT's future operations across a range of areas. This response to the review provides a schedule of the recommendations, the government's position on each recommendation and the current status of each recommendation which the government intends to pursue.

It is acknowledged that obtaining accurate statistical information for the purpose of this review proved to be challenging. The reporting is not straightforward to interpret, however work is underway to create a clearer view in the future.

Legislative change

The review found that the main objectives of the Act are commendable, but create tensions that require a balance that is not always easy to achieve. For example the principles of public administration must be balanced against accessibility and fast processing while achieving a just outcome; independence and authority must be balanced against informality; and lack of technicality and straightforward language and procedures must still ensure an adequate understanding by parties of their legal rights and remedies. The review has made recommendations for several amendments to the Act, and a number of amendments to other relevant Acts to allow for improved efficiency of the tribunal.

These recommendations are largely supported. The *Statutes Amendment (SACAT No 2) Bill 2017* which has been introduced to parliament includes a number of efficiency measures and the Government will move amendments to the Bill to implement these recommendations.

Membership structure and workflow

The review made significant comment on the levels of membership of SACAT and the distribution between full-time, part-time and sessional appointments. It identified that the role of president, at that time Justice Greg Parker, included significant administration and management of tribunal business and placed unrealistic demands upon a president acting in a part-time capacity and also undertaking significant Supreme Court functions.

The review recommends a full-time president. This recommendation is accepted. The Governor appointed the Honourable Justice Judy Hughes as a Judge of the Supreme Court and full time president of SACAT (effective 4 July 2017). The Governor accepted Justice Parker's resignation from the Tribunal at the time of Justice Hughes' appointment, and he took up a full time position in the Supreme Court.

The review identified that the then Deputy President Judge Cole, whose resignation was accepted by the Governor at the end of August 2017, was appointed on a quarter-time basis and also required to participate in the management of tribunal members. It recommended that there should be at least one full-time deputy president appointed. Additionally the use of sessional members over permanent members was noted as problematic and reasons for doing so such as economics and efficiencies significantly questioned. The review recommended that the proportion of sessional to permanent members be further reviewed in light of the number and type of applications being filed with SACAT and efficiencies made by way of other improvements.

I would like to thank former President Justice Parker and former Deputy President Judge Cole for their leadership and commitment to SACAT in its first two years of operation.

I look forward to working with Justice Hughes in her role as full-time president of the tribunal.

Co-location

Perhaps some of the strongest recommendations in the review focussed on SACAT's separate premises. The review identified the adverse consequences of operating in two locations and a number of improvements that could be achieved by co-location.

The government accepts the rationale for these recommendations and will work towards co-location.

Technology

It is pleasing that despite its implementation difficulties, the review recognised the boldness taken in implementing the electronic case management system at SACAT. The government generally supports the findings on the technology platforms used by SACAT and acknowledges the challenges of moving from a paper-based environment to an electronic environment.

Training and development

The review found that the present level and quality of training of its members is inadequate and requires significant reform and resources in order to ensure high-quality and consistent decision-making. A number of recommendations were made in order to achieve this.

SACAT is currently undertaking a review of the training provided to members with a view to enhancing induction training, and expanding the ways in which training is delivered. The president is also meeting with members to seek their views, and assessing best practice models.

Fees

It is clear that fee levels for applications have the capacity to influence the demand for services from the tribunal. The review found that SACAT's fees and waiver policies have been major contributors to the very substantial and unbudgeted increase in the number of applications in some areas since SACAT began. Tribunals elsewhere around Australia have had a similar experience.

The review found that the fees affect the SACAT budget in two ways. Firstly, lower fees reduce the likelihood of achieving cost recovery and secondly, by increasing accessibility the costs associated with providing the service are also increased.

In principle the government accepts the recommendation that a comprehensive fee review be undertaken, including development of a concession and waiver policy, and the need to provide a range of fees for applications. However it is important to maintain a balance between regulating the demand for the services of the tribunal and ensuring it remains accessible.

Extending SACAT jurisdiction

The government has already announced that the jurisdiction of SACAT will be significantly increased. The *Statutes Amendment (SACAT No 2) Bill 2017* which is currently before parliament will amend 41 Acts of Parliament. The review noted that the timing of inclusion of new jurisdictions must be dependent on adequate resourcing. The review is supportive of the additions to SACAT's jurisdiction which will be occasioned by the Bill in Parliament, although the government does not agree with all of the additional jurisdictions recommended. The broader recommendations contained in the review can only assist in the transition and ongoing management of the new jurisdictions.

Next steps

The government is committed to the continuous improvement of SACAT so that it can best meet the needs of our community.

The 2016-17 mid-year budget review provided an additional \$5.2 million across the forward estimates to further support the operations of SACAT. The 2017-18 budget provided an additional \$6.1 million over 4 years to enable the transfer of additional jurisdictions to SACAT, as well as a further \$3.2 million over 4 years to enable the appointment of a full time president.

Much work is currently underway investigating the feasibility of each of the recommendations. Some have been accepted already and either implemented or are in the process of being implemented, as can be seen in the attached schedule of recommendations.

I take this opportunity to thank members of the tribunal, staff, key stakeholders and interested members of the public for their input and valuable insight throughout the review process and wish the Hon Justice Judy Hughes well in her new role as president of SACAT.

More information on the government's continuing commitment to justice through the operation of SACAT including a copy of the review can be found at www.aqd.sa.gov.au.



John Rau MP
Deputy Premier
Attorney-General

SACAT Review – Response

#	Recommendation	Government position
1	That work already in train for developing key performance indicators continues for implementation as soon as possible.	Accepted
		Underway
<p>STATUS Work is well progressed, with SACAT incorporating detailed KPI metrics across the entire tribunal and developing a consistent methodology for all staff and members. This will also encompass the measurements outlined in the Council of Australasian Tribunals (COAT) framework for excellence.</p> <p>Expected to be completed by the end of 2017.</p>		

#	Recommendation	Government position
2	That applications lodged, applications finalised, applications pending and a clearance metric should be seen as the formative performance benchmarks reportable in the Annual Report.	Accepted
		Planned
<p>STATUS These metrics will be incorporated into SACAT's 2017-2018 Annual Report.</p>		

#	Recommendation	Government position
3	That in conjunction with the recommendations contained in this report a review be undertaken of the recommendations for reform contained in the KPMG Report dated 22 February 2016 and appropriate action be taken when necessary.	Accepted
		Underway
<p>STATUS The review of the KPMG Report has been completed. SACAT is currently developing a formal program plan which will incorporate the KPMG recommendations, the recommendations from this independent review and other critical initiatives already underway to ensure a structured and appropriately sequenced approach is undertaken. The program plan is expected to be completed by the end of 2017.</p>		

#	Recommendation	Government position
4	That in the future appointment of members greater emphasis be placed on the engagement of full-time and part-time members and that there be continued review of the need for such appointments.	Accepted
		Planned
<p>STATUS As the current work of SACAT is better understood, and as new jurisdiction is conferred in the future, the tribunal's ability to identify where there is need for full or part-time members becomes clearer, and its ability to confidently employ full and part-time members is strengthening.</p> <p>A recruitment process for sessional members was underway when the review report was delivered. The need for sessional members will continue in order to provide the range of expertise and the flexibility that the tribunal requires</p>		

#	Recommendation	Government position
5	That a project officer be appointed to assist the registrar in the discharge of her functions.	Accepted
		Planned
<p>STATUS SACAT has appointed a dedicated, full-time project manager for an initial 6-month period, and is undertaking a systematic review of all current and future projects to identify and assess the level of project resources required going forward.</p>		

#	Recommendation	Government position
6	That consolidation of the Tribunal to one location be one of the highest and most urgent priorities.	Accepted in principle
		Planned
<p>STATUS While the benefits of co-location are clear from the review, it will require careful planning to assess multiple options, funding requirements and accommodation availability.</p> <p>A SACAT accommodation strategy is being developed to address SACAT's current accommodation needs, the potential consolidation of all streams and the increased needs as a result of future jurisdictions to be conferred.</p>		

#	Recommendation	Government position
7	<p>That the consolidated site should:</p> <ul style="list-style-type: none"> • be located within the Adelaide CBD • be sufficient to accommodate all likely future jurisdictions of SACAT even if, for an interim period, portion of the premises is sublet or used for temporary accommodation of other government activities • have ground floor or single entrance security facilities • have convenient access to public transport • have nearby car parking facilities and convenient access and parking for the disabled. 	Accepted in principle
		Planned
<p>STATUS The Government will not be in a position to respond to this recommendation until such time as the SACAT accommodation strategy referred to in Recommendation 6 above is completed and options considered.</p>		

#	Recommendation	Government position
8	<p>That a systems analyst be engaged for a period of up to 12 months to assist the IT and systems manager and staff in the restoration of the FELIX system to an efficient and workable system properly able to service the needs of SACAT.</p>	Accepted in principle
		Planned
<p>STATUS As with Recommendation 5, the number and type of resources required by SACAT to implement business and system improvements is currently being reviewed.</p> <p>SACAT is also considering the development of specific skill sets 'in-house' as a means of broadening competencies and delivering on future programs as required.</p>		

#	Recommendation	Government position
9	<p>That the use of voice recognition technology in the production of transcript be investigated.</p>	Accepted
		Planned
<p>STATUS Further exploration of options to enable receipt of improved quality recordings and using voice recognition software for transcription will be undertaken.</p> <p>Expected to be completed by the end of 2017.</p>		

#	Recommendation	Government position
10	That options for a more flexible telephone system be investigated with a view to replacement of the existing system to improve accessibility to SACAT.	Accepted
		Planned
<p>STATUS A review of a more flexible telephone system will be completed by the end of 2017.</p>		

#	Recommendation	Government position
11	That the induction training of new members of the Tribunal includes an appropriate form of audit of the conduct of their proceedings and of the appropriateness of orders made.	Accepted
		Planned
<p>STATUS Members' induction currently includes a review of their initial decisions by the relevant executive senior member, and the appraisal process incorporates a review of one or more of the members' hearings. This process will be formalised and supplemented with a documented audit, evaluation and feedback process of a sample of members' hearings and orders.</p>		

#	Recommendation	Government position
12	That a training and development committee of members of the tribunal convened by a deputy president or senior member, be formed to advise on and to organise integrated programs for the induction, training and development of all tribunal members.	Accepted in principle
		Planned
<p>STATUS SACAT is planning a review of training offered and available for members. A working group or committee will explore the options for internal and externally sourced training. It is expected that the review of training will be completed by the end of 2017.</p>		

#	Recommendation	Government position
13	That all members of the tribunal, including sessional members, be required to attend the equivalent of not less than 2 full days each year in formal training and development activities.	Accepted
		Planned
STATUS This training has been planned for in the 2017/18 financial year.		

#	Recommendation	Government position
14	That negotiations be undertaken with the Law Society of South Australia and other professional regulators for recognition of appropriate elements of SACAT's training program for the purposes of mandatory continuing professional development requirements where compliance with such requirements is a condition of the right to practise a profession.	Accepted
		Planned
STATUS Future training for SACAT members will be developed to enable recognition of appropriate elements of the training under the Law Society and other professional regulator's schemes for mandatory continuing professional development (MCPD). Assessment of MCPD requirements to be completed by 30/3/2018.		

#	Recommendation	Government position
15	That there be a review of training programs and promotion opportunities for staff in the Housing and Civil stream of the tribunal with a view to reducing staff turnover at lower levels and improving the quality of computer input to the FELIX system.	Accepted in principle
		Planned
STATUS A comprehensive review of existing training programs and promotion opportunities for staff within all sections, including the Housing and Civil stream of the tribunal will be undertaken. This is expected to be completed by 30/3/2018.		

#	Recommendation	Government position
16	That SACAT's case management system be modified as soon as possible to allow the grouping of applications relating to one applicant in the same list and to avoid the listing of one applicant in different lists at the same time.	Accepted in principle
		Planned
<p>STATUS Detailed business requirements will be developed to ensure the necessary level of system changes can be identified and costed. It is expected that the changes will be significant and require some time to implement.</p> <p>Implementation of these changes will be prioritised and sequenced with the broader system amendments required.</p>		

#	Recommendation	Government position
17	That in consultation with representatives of the real estate industry, a system be devised in residential tenancy applications which would enable applications lodged by an approved property manager to be listed for hearing without being referred to a compulsory conference.	Further investigation required
		Underway
<p>STATUS SACAT is currently exploring with stakeholder groups ways, including but not limited to that recommended in the report, to recognise where genuine attempts at negotiations have been undertaken prior to matters being listed.</p>		

#	Recommendation	Government position
18	That the existing streams be discontinued for administrative purposes and that appropriate lists be maintained or established for the listing of cases in particular subject matters by members willing and considered able to hear them.	Further investigation required
		Planned
<p>STATUS The use of streams is closely connected with the current operations of SACAT over the two primary sites at Pirie Street and Collinswood. Further investigation of the dissolution of streams in favour of the use of lists and other means of grouping like-activities of the tribunal will be undertaken when a decision is made as to the action to be taken under recommendation 6.</p>		

#	Recommendation	Government position
19	That the president or his or her delegate maintain a list of members willing and considered able to hear matters in all relevant lists and, in the case of part-time and sessional members, their availability for selection.	Accepted in principle
		Planned
<p>STATUS Implementation of this recommendation, in its current form or modified as necessary, will be undertaken once the outcome of recommendation 18 is determined.</p>		

#	Recommendation	Government position
20	That without derogating from the president's powers under section 23 of the SACAT Act as to the constitution of the Tribunal, delegation of that power with appropriate directions where necessary be continued to deputy presidents, senior members, the registrar, deputy registrars and heads of a list.	Accepted
		Planned
<p>STATUS Linked to Recommendations 21 and 22, this is considered to be a longer-term project which will encompass a comprehensive review of the leadership structure in light of recent changes to the presidential membership of the tribunal and following the proposed conferral of additional jurisdictions.</p>		

#	Recommendation	Government position
21	That the existing Executive Leadership Group be discontinued and the office of Executive Senior Member be phased out.	Further investigation required
		Planned
<p>STATUS Linked to Recommendations 20 and 22, this is considered to be a longer-term project which will encompass a comprehensive review of the leadership structure. With the recent appointment of Justice Hughes, it would be premature to action further this recommendation until she has had adequate time to consider the structure of the tribunal, staffing, administration matters and the continued organisation of work through the existing streams.</p>		

#	Recommendation	Government position
22	That consideration be given to a leadership structure that includes two full-time deputy presidents and a full-time Senior Member.	Further investigation required
		Planned
<p>STATUS Linked to Recommendations 20 and 21, this is considered to be a longer-term project which will encompass a comprehensive review of the leadership structure. With the recent appointment of Justice Hughes, it would be premature to action further this recommendation until she has had adequate time to consider the structure of the tribunal, staffing, administration matters and the continued organisation of work through the existing streams.</p>		

#	Recommendation	Government position
23	That priority be given to the development and revision from time to time of a protocol for the use and conduct by Dispute Resolution Officers of compulsory conferences in all aspects of the Tribunal's jurisdictions, and that it be extended to include each new jurisdiction as it is added to SACAT.	Accepted
		Underway
<p>STATUS SACAT is currently working on internal protocols to enable greater utilisation of the dispute resolution process.</p>		

#	Recommendation	Government position
24	That full-time and part-time members of the Tribunal be afforded appropriate training opportunities for development of skills in alternative dispute resolution and that, where appropriate, greater weight be given in the appointment of Sessional members to those who are accredited mediators.	Accepted in principle
		Planned
<p>STATUS Planning is underway for an investment in member training in alternative dispute resolution by accredited trainers within the 2017/18 financial year, with a view to training most if not all members during their current terms of membership.</p>		

#	Recommendation	Government position
25	That present and future Dispute Resolution Officers be appointed as Ordinary members of the Tribunal with primary responsibility to the president for alternative dispute resolution services.	Further investigation required
		Planned
<p>STATUS This recommendation will be further considered as new jurisdiction is conferred and the new demands for alternative dispute resolution become apparent.</p>		

#	Recommendation	Government position
26	That a comprehensive fee review be undertaken providing for a range of fees for different types of application, including internal reviews, and in appropriate cases a range of fees for the same kind of application related to value and/or corporate status of the applicant, and that the review include provision for the payment of appropriate order enforcement fees.	Accepted in principle
		Planned
<p>STATUS A comprehensive fee review will be undertaken taking into account the issues raised in the review by 30 June 2018.</p>		

#	Recommendation	Government position
27	That a fee concession policy be developed whereby, on presentation of satisfactory evidence to meet one of the conditions such as those specified by NCAT, the applicant will be entitled to a specified reduction of the application fee but not of the whole fee.	Accepted
		Planned
<p>STATUS SACAT is currently reviewing its existing procedures and protocols with the intent of developing a framework for appropriate consideration, approval and communication. This is expected to be completed by the end of 2017.</p>		

#	Recommendation	Government position
28	That a fee remission policy be developed for those who do not qualify under the preceding recommendation or who seek a greater fee remission which requires proof of financial hardship and that a policy be developed for the assessment of such applications.	Accepted
		Planned
<p>STATUS Linked to Recommendation 27, SACAT is reviewing existing procedures and protocols which will clearly outline a process wherein appropriate circumstances can be assessed, with due consideration applied once approved. This is expected to be completed by the end of 2017.</p>		

#	Recommendation	Government position
29	That the SACAT website contain a clear explanation of the requirements for both fee concession and fee remission applications and an outline of the application process, together with appropriate forms for completion and submission.	Accepted
		Planned
<p>STATUS Linked with Recommendations 27 and 28, and other aspects of the Statutory Review, SACAT is committed to reviewing all communications contained on the SACAT website to ensure that they are consistent in language and provide clarity to all users.</p>		

#	Recommendation	Government position
30	That a record be kept of the granting or refusal of each application and of the date and by whom it was granted or refused and, where granted, the terms of the grant, in such a way as to enable live reporting and auditing of such applications and grants.	Accepted
		Planned
<p>STATUS Implementation of this recommendation will be prioritised and sequenced with the range of amendments required to be made to SACAT systems as a result of other recommendations, in particular recommendations 3, 8 and 16.</p>		

#	Recommendation	Government position
31	That the SACAT Act be amended to create an offence of knowingly giving false or misleading information to the Tribunal or a Registrar.	Accepted
		Underway
<p>STATUS This recommendation was made in the context of a range of proposals relating to SACAT's fees and reduction or remission of those fees on the grounds of hardship. The government agrees it is a useful provision for ensuring the integrity of the fee remission application process. The recommendation will be implemented by moving a government amendment to this effect to the Statutes Amendment (SACAT No 2) Bill 2017 (SACAT No 2 Bill) currently before Parliament.</p>		

#	Recommendation	Government position
32	That SACAT incorporate into the case management system a system for recording the actual time spent in processing and determining matters currently assigned to the Administrative and Disciplinary Stream, including an estimate for matters current and so far completed, and of all matters in jurisdictions to be added to SACAT in order properly to monitor future resource requirements and the effect of fee adjustments.	Accepted in principle
		Planned
<p>STATUS In appreciation of the complexities of the current IT systems and the linkages with other similar recommendations in particular recommendations 3, 8 and 16, specific action on this recommendation will be deferred until such time as other related items have been addressed.</p> <p>Implementation of this recommendation will be prioritised and sequenced with the range of changes required to be made as a result of other recommendations, in particular recommendations 3, 8 and 16.</p>		

#	Recommendation	Government position
33	That a Service Charter be established to provide information on services and levels of service that all parties could expect from SACAT and to which all SACAT staff and volunteers would be expected to adhere and be accountable.	Accepted
		Underway
<p>STATUS A Service Charter will be established and delivered by the end of 2017.</p>		

#	Recommendation	Government position
34	That the Complaints Policies be reviewed to incorporate processes whereby users may be made aware of the essential elements of the policy, how to make a complaint and how it will be handled.	Accepted
		Underway
STATUS Complaints policies will be reviewed and modified by the end of 2017.		

#	Recommendation	Government position
35	That a process be developed for the proper recording, including the tracking, measuring and moderating of and responding to complaints and in such a way as leads, where necessary, to opportunities for process improvement.	Accepted
		Underway
STATUS SACAT has commenced development of a revised framework with the view to implement/communicate by the end of 2017.		

#	Recommendation	Government position
36	A professional Communications Officer be engaged to service these and other significant communication requirements of SACAT.	Accepted
		Planned
STATUS In consideration of the review and the priorities attached to the recommendations, SACAT will work with AGD Strategic Communications to identify and engage suitably skilled resources as required.		

#	Recommendation	Government position
37	That the Tribunal be established as an attached office under section 27 of the <i>Public Sector Act 2009</i> attached to the Attorney-General's Department.	Not accepted
STATUS After discussing this recommendation with SACAT's new president, Justice Hughes, the government does not consider it necessary to implement this recommendation.		

#	Recommendation	Government position
38	That section 70 of the SACAT Act be amended to provide that an internal review of a decision may only be made with the permission of the Tribunal	Accepted
		Underway
<p>STATUS Currently leave is only required for internal reviews of decisions of SACAT when constituted by a registrar or other staff member. It is agreed the establishment of a general requirement for leave – equivalent to that under section 64(c) of the <i>Guardianship and Administration Act 1993</i> – would have merit, especially in dealing with matters involving an unrepresented applicant, who might have had difficulty articulating the grounds of review and/or the relief being claimed in the internal review application.</p> <p>The recommendation will be implemented by moving a government amendment to this effect to the SACAT No 2 Bill currently before Parliament.</p>		

#	Recommendation	Government position
39	That section 70 of the SACAT Act be amended to provide for the stay by a presidential member or a legally qualified Senior member of a decision the subject of an application for internal review.	Accepted
		Underway
<p>STATUS While section 70 contains no provision for the stay of an order the subject of an application for internal review, in certain circumstances that could be necessary or desirable. This recommendation will be implemented by moving a Government amendment to this effect to the Statutes Amendment (SACAT No 2 Bill) currently before Parliament.</p>		

#	Recommendation	Government position
40	That section 70 of the SACAT Act be amended to provide that if the presiding member of the Tribunal on an internal review so requests, reasons for the decision under review must be provided by the decision maker.	Accepted
		Underway
<p>STATUS Section 35(2) of the Act requires the provision of reasons by an external decision maker whose decision is under review by the Tribunal. In contrast, section 70 makes no provision for the original decision maker to provide reasons. It is accepted that an equivalent power may be required for internal reviews of an original decision by a SACAT member. This recommendation will be implemented by moving a government amendment to this effect to the SACAT No 2 Bill currently before Parliament.</p>		

#	Recommendation	Government position
41	That consideration be given to the amendment of section 75 of the SACAT Act to extend the administrative powers of the Registrar along the lines suggested.	Accepted
		Underway
<p>STATUS</p> <p>The report recommends extending the administrative powers of the registrar by allowing the registrar to act on behalf of the president in the administration of SACAT, subject to any directions of the president. It is agreed that this is a useful measure for the improved efficiency of SACAT. The recommendation will be implemented by moving a government amendment to this effect to the SACAT No 2 Bill currently before Parliament.</p>		

#	Recommendation	Government position
42	That subject to the qualifications referred to in this report the legislative amendments referred to in the letter from the president of the tribunal dated 17 May 2016 and the briefing memorandum from the community stream ESM to the president dated 21 March 2017 be enacted as soon as possible.	Accepted in principle
		Underway
<p>STATUS</p> <p>Recommendation 42 is that some 15 efficiency and other suggestions previously made by SACAT at that time, be implemented.</p> <p>The majority of these are supported and contained in the SACAT No 2 Bill, introduced in Parliament on 9 August 2017. Another two are being otherwise progressed by the Minister for Health and the Minister for Consumer and Business Affairs.</p> <p>In relation to SACAT's proposal for greater oversight by the Tribunal of appointed private administrators, the government supports this recommendation in principle, noting this proposal will have resource implications for SACAT and will require consultation with private administrators and other affected persons. However, given the in-principle support, it is intended to amend the <i>Guardianship and Administration Act 1993</i> (by in-house amendment to the SACAT No 2 Bill) to insert a regulation-making power that would enable such a scheme to be introduced in the future by regulation.</p> <p>In relation to SACAT's proposal to narrow the categories of persons who may witness the making of an advance care directive (ACD) or appointment of a substituted decision maker (SDM), this requires further consideration as there are contrary policy arguments that the ability to make an ACD or SDM should be facilitated, and thereby encouraged, to the greatest extent reasonable. The government acknowledges that SACAT's argument has merit and will give the proposal further detailed consideration.</p> <p>The proposal to extend the duration of a first urgent interim guardianship or administration order from 21 to 30 days and also allow one only extension of 14 days is not supported, due to concern it will reduce the rights of protected people who have no notice of such urgent</p>		

hearings. For similar reasons the proposal that the cost of a psychological or psychiatric assessment ordered by SACAT, of a person the subject of guardianship or administration proceedings before SACAT, be borne out of the estate of the person, rather than paid for by SACAT, is not supported.

#	Recommendation	Government position
43	That section 33 of the <i>Housing Improvement Act 2016</i> be amended to provide for a right to review a refusal to revoke or vary an order or notice.	Already addressed
	<p>STATUS The recommendation that section 33 of the <i>Housing Improvement Act 2016</i> be amended to provide a right to review a refusal to revoke or vary an order or notice under this Act will no longer be necessary once the SACAT No 2 Bill repeals section 41 of that Act (which is being repealed for consistency with repeal of section 37 of the <i>Residential Tenancies Act 1993</i>, originally proposed by SACAT). These provisions are to be repealed on the basis that the power to vary or revoke orders is unnecessary in light of the availability of internal review by SACAT, and is being abused to an extent that significantly undermines SACAT's efficiency.</p>	

#	Recommendation	Government position
44	That the jurisdictions of the Minister under section 12 B and of the Supreme Court under section 25 of the <i>Land Acquisition Act 1969</i> be included in the jurisdictions to be transferred to SACAT in Stage 3, and that the provisions of the Supreme Court Act 1936 relating to the Land and Valuation Division of the Court be repealed.	Not accepted
	<p>STATUS These jurisdictions are in the nature of judicial rather than administrative powers.</p> <p>The government has been clear from the outset in establishing SACAT that it is to be an administrative tribunal, exercising predominantly administrative functions and to be separate and distinct from a court. For this reason this recommendation is not supported, however the government will explore, subject to legal advice, the feasibility of arbitration by consent.</p>	

#	Recommendation	Government position
45	That the jurisdiction of the Supreme Court under sections 9, 11 and 11 A of the <i>Powers of Attorney and Agency Act 1984</i> be included in the jurisdictions to be transferred to SACAT in Stage 3.	Accepted in principle
		Planned
<p>STATUS The Attorney-General currently has a Bill under development to update and replace the Powers of Attorney and Agency Act with a new Act and to transfer jurisdiction to SACAT. However the Bill is unlikely to be sufficiently progressed for the jurisdiction to be included in Stage 3, which is the stage being conferred by the SACAT No 2 Bill currently before Parliament.</p>		

#	Recommendation	Government position
46	That the jurisdiction of SACAT under the <i>Residential Tenancies Act 1995</i> be extended to include jurisdiction over the disputes identified in Section 9.4 and that such transfer be included in the jurisdictions to be transferred to SACAT in Stage 3.	Further consideration required
		Planned
<p>STATUS The recommendation is that the scope of jurisdiction of SACAT to determine disputes under the Residential Tenancies Act be broadened to encompass a wider range of disputes other than between the immediate parties to tenancy agreements, for example between tenants or between landlord or tenant and an occupier. This would be a significant departure from the current scope of the Act and a significant expansion of SACAT's jurisdiction.</p>		

#	Recommendation	Government position
47	That the jurisdiction of the Legal Practitioners Disciplinary Tribunal under the <i>Legal Practitioners Act 1981</i> not be transferred to SACAT.	Accepted
		Completed
<p>STATUS The review argues that the Legal Practitioners Disciplinary Tribunal is an agent of the Supreme Court in disciplining legal practitioners, and that it would be unwise and an intrusion on the constitutional separation of powers for such functions to become vested in SACAT. This jurisdiction was slated for transfer to SACAT in stage 4 of jurisdiction conferral, however the government understands the review's argument and will remove this jurisdiction from the schedule of future jurisdictions proposed for transfer to SACAT.</p>		

#	Recommendation	Government position
48	That the jurisdiction of the Supreme Court to issue warrants under the <i>Listening Devices and Surveillance Devices Act 1972</i> be transferred to SACAT as soon as possible.	Accepted
		Planned
<p>STATUS This jurisdiction is already included in the schedule of future jurisdiction transfer to SACAT, but the appropriate stage for conferral is yet to be decided. The government, in consultation with SACAT, will further consider appropriate timing for transfer of this jurisdiction, bearing in mind the implementation requirements for transfer.</p>		

#	Recommendation	Government position
49	That subject to the government obtaining formal legal advice, the jurisdiction of the Magistrates Court to hear and determine a “minor civil action” be transferred to SACAT as soon as possible.	Not accepted
<p>STATUS The government has been clear from the outset in establishing SACAT that it is to be an administrative tribunal, exercising predominantly administrative functions, and to be separate and distinct from a court. For this reason this recommendation is not supported, however the government will explore, subject to legal advice, the feasibility of arbitration by consent.</p>		

#	Recommendation	Government position
50	That subject to the government obtaining formal legal advice, the jurisdiction to hear and determine civil actions under the Australian Consumer Law given effect by the <i>Fair Trading Act 1987</i> to a level similar to that of the minor civil action jurisdiction of the Magistrates Court be transferred to SACAT as soon as possible.	Accepted in principle
		Planned
<p>STATUS The government intends to confer an appropriate scope of consumer disputes jurisdiction on SACAT. However, past consultation on this proposal has identified both constitutional risks and practical inefficiencies with this proposal. For example, the inability of SACAT, as a tribunal not a court, to enforce its own orders and the likely jurisdictional overlap and inefficiency where consumer claims are raised as counterclaims such as, in a trader’s debt claim before the court.</p> <p>These are being carefully worked through to ensure outcomes for consumers are not compromised. Further work and consultation is required in order to determine the appropriate scope of consumer disputes jurisdiction to confer on SACAT and the stage at which this should occur.</p>		

#	Recommendation	Government position
51	<p>That the government, in consultation with the president of SACAT, develop an agreed process for the planning of and budget provision for:</p> <ul style="list-style-type: none"> • the addition of each individual jurisdiction to SACAT • the identification and addition of all likely future jurisdictions of SACAT • the recognition of and planning and budget provision for external events which are likely to have a significant impact on the exercise of SACAT jurisdictions. 	<p>Accepted in principle</p> <hr/> <p>Planned</p>
<p>STATUS The Attorney-General’s Department and SACAT management will work collaboratively to develop appropriate protocols, policies and processes that will assist with future activities for new jurisdictions.</p> <p>The Department of the Premier and Cabinet will also take a greater role in engaging with AGD and SACAT when additional jurisdictions are being proposed by other Government agencies, early in the process so that effective planning can be undertaken.</p>		



Government of South Australia

Attorney-General's Department