

South Australian Civil and Administrative Tribunal Practice Directions

The South Australian Civil and Administrative Tribunal Practice Directions 2015, which came into operation on 29 March 2015, have been varied by South Australian Civil and Administrative Tribunal Practice Directions dated:

Amendment Number	Date made:	Date of operation
1	5 July 2016	5 July 2016

The President of the South Australian Civil and Administrative Tribunal makes the following Practice Directions under rule 9 of the *South Australian Civil and Administrative Tribunal Rules 2014*.

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Part 1 Preliminary

1. Interpretation

- a. In these Practice Directions:
 - i. words used have the same meaning as words used in the SACAT Act, Regulations or Rules or, where relevant, a relevant Act or regulations made under a relevant Act;
 - ii. **the SACAT Act** means the *South Australian Civil and Administrative Tribunal Act 2013*;
 - iii. **the Regulations** means the *South Australian Civil and Administrative Tribunal Regulations 2015*;
 - iv. **the Rules** means the *South Australian Civil and Administrative Tribunal Rules 2014*;
- b. These Practice Directions are to be read subject to the SACAT Act, Regulations and Rules and to any provision of a relevant Act or regulations under a relevant Act.

2. Dispensation from these Practice Directions

The Tribunal may, on application or on its own initiative, dispense with compliance by any person with, or vary any requirement of, these Practice Directions, either before or after the time for compliance arises, and in doing so may impose any conditions or give any consequential or other directions as it considers appropriate.

Part 2 Streams

3. Allocation of matters to Streams

- a. Matters to be heard by the Tribunal in its original jurisdiction or review jurisdiction are allocated to the Streams, and, where relevant, to the Lists within Streams, as set out in Schedule 1.
- b. However, matters may be transferred between Streams or between Lists at the President's discretion.
- c. Any matter capable of being heard by the Tribunal that is not referred to in Schedule 1 is included in the Administrative and Disciplinary Stream unless otherwise determined by the President.

Part 3 Adjournments of conferences or hearings

4. Applications for adjournment of a conference or hearing

- a. All applications for adjournment of a conference or hearing must identify the Tribunal reference number for the proceedings and set out the reasons the adjournment is sought.

- b. The application must be made as soon as a party decides to seek an adjournment and a copy of any supporting documents (e.g. medical certificate) must be submitted with the application.
- c. If the other party's consent to the adjournment has been obtained, a copy of that party's written consent must be provided.
- d. Any applications for adjournment made less than two clear working days before the conference or hearing date may be referred to the conference or hearing for determination.
- e. An application for adjournment may be made at the conference or hearing on the same grounds as an application made before a conference or hearing.
- f. Unless notified by the Tribunal of the granting of an adjournment, a party must assume that the conference or hearing will proceed in the party's absence on the day and at the time fixed for the conference or hearing.

Part 4 Enforcement of Orders by Bailiffs

5. Application and Definitions

- a. This Part applies to orders for possession of premises under the *Residential Parks Act 2007* or the *Residential Tenancies Act 1995* and orders for ejection under the *Retirement Villages Act 1987*.
- b. In this Part, "landlord" means the person in whose favour the relevant order was made and "tenant" means the person in respect of whom the relevant order was made.

6. Advice that order not complied with

If the Tribunal makes an order for possession of premises under the *Residential Parks Act 2007* or the *Residential Tenancies Act 1995* or an order for ejection under the *Retirement Villages Act 1987* which is not complied with, and the landlord seeks to have a bailiff enforce the order, the landlord must advise a registrar of the Tribunal in writing of the non-compliance and of the requirement for a bailiff to enforce the order (or orally, where the relevant Act permits a request to be made orally).

7. Attendance by landlord, etc., at time of enforcement

- a. The landlord or the landlord's agent must attend with the bailiff for enforcement of the order.
- b. The bailiff will secure the removal of the tenant from the premises but not his or her belongings.

Note: Arrangements for the collection of the tenant's personal property and any changing of locks required by the landlord, and the costs of those, are not the responsibility of the Tribunal.

8. Safety and security during enforcement action

- a. The landlord must inform the bailiff of any matters that might indicate that the bailiff's safety will be or could be at risk during the enforcement of the order.

- b. The landlord must not interfere with any decision or action taken by the bailiff to protect the bailiff's safety during the enforcement action.

Note: The landlord or the landlord's agent may be accompanied by his or her own security personnel during the enforcement at his or her own expense.

Part 5 Disclosure and production of documents

9. Form of List

- a. This Practice Direction applies where the Tribunal has ordered that a party or person disclose to the Tribunal all documents which are in the possession or control of that party or person and are directly relevant to the proceedings.
- b. A list of documents must not describe a document separately where it is:
 - i. part of a file which is discovered as a file; or
 - ii. contained on a computer disk which is disclosed as a disk; or
 - iii. part of a related group of documents where the group is disclosed, e.g., the accounting records for a stated financial year; or
 - iv. a copy or a different version of a document already disclosed; or
 - v. of similar type but of different date or content to a document already disclosed.
- c. A list of documents must include any claim of privilege or immunity in relation to a document and the grounds upon which the claim is based.

Part 6 Use of concurrent oral expert evidence in the Tribunal

10. Guide to Part and Objectives

The Tribunal may use the concurrent evidence procedure in suitable cases. The concurrent evidence procedure involves two or more experts giving evidence at the same time in a Tribunal hearing, whether in person or by telephone or video link. It provides a forum in which, in addition to providing their own evidence, experts can listen to, question and comment on the evidence of other experts.

11. Identification and selection of cases

- a. The Tribunal may direct that the concurrent evidence procedure be used in any proceedings where both parties will call oral evidence from experts.
- b. In deciding whether or not the concurrent evidence procedure should be used, the Tribunal will take into account:
 - i. the nature and complexity of the issues in relation to which expert evidence is to be given; and

- ii. the areas of expertise and level of expertise of the experts who will be giving evidence; and
- iii. the likely impact of using the concurrent evidence procedure on the length of the hearing and the costs of the parties; and
- iv. whether both parties are represented; and
- v. the views of the parties; and
- vi. other relevant factors.

12. The role of parties, their representatives and experts

- a. Parties and their representatives must ensure that all relevant things are done to facilitate the use of the concurrent evidence procedure.
- b. Experts must participate in the concurrent evidence procedure in good faith and must be willing to consider and comment on alternative factual premises and opinions.

13. Pre-hearing experts' conference

- a. The Tribunal may direct that the experts who are to give evidence concurrently are to confer prior to the day of the hearing or on the day of the hearing as part of the concurrent evidence procedure.
- b. In the experts' conference, the experts are to identify any areas of agreement and clarify areas of disagreement in relation to the issues before the Tribunal.
- c. The presiding Member may direct the parties to prepare a joint written memorandum identifying areas of agreement and disagreement identified in the experts' conference.
- d. Where the presiding Member has directed the experts to confer, it is improper for an expert to be given, or to accept, instructions not to reach agreement.

Part 7 Internal Reviews

14. Form of internal review

- a. An internal review will be generally be heard by the Tribunal with both parties present and making oral submissions.
- b. However, the Tribunal may deal with an internal review on the papers, that is on the basis of the written material given to the Tribunal without holding an oral hearing.
- c. Any party may, within 21 days after acceptance by the Tribunal of the application for internal review, request that the application be dealt with on the papers.

- d. An internal review will only be decided on the papers where the parties have had the opportunity to make submissions on whether there should be an oral hearing and the Tribunal has decided that it is appropriate to do so.
- e. If necessary, a short telephone hearing involving all parties may be scheduled to consider whether the internal review should proceed on the papers.

15. Directions for the conduct of internal reviews

- a. Except when the internal review is suitable to be dealt with on the papers, in general, within 28 days after acceptance by the Tribunal of the application for internal review, the Tribunal will give written directions to the parties for the conduct of the internal review.
- b. The parties will be notified if they are required to participate in:
 - i. a conference; or
 - ii. a directions hearing where there are unusual aspects to the internal review or the matter is relatively complex; or
 - iii. a hearing of any preliminary matters (for example an application for an extension of time for filing of the internal review, or an application for interim orders).
- c. If a party wishes to present new evidence or material, the Tribunal will make special directions and decide what procedure will be followed after giving the parties an opportunity to be heard.
- d. Where appropriate, a conference or directions hearing may be conducted by telephone, video link or other system or method of communication.

16. Timetable and location

- a. If written directions are given in proceedings for internal review, they may include a timetable for the parties to give the Tribunal and each other written submissions and other material.
- b. In most cases, the appellant's written submissions and any other material will be required to be given to the Tribunal within 21 days of the date of the directions. The respondents' written submissions and any other material will generally be required to be given to the Tribunal within a further 21 days.
- c. If an oral hearing is to take place, a date for hearing will normally be fixed as part of the written directions.
- d. If the Tribunal is considering whether to deal with the internal review on the papers, the written directions may also include a timetable for submissions by the parties on whether the internal review should be determined on the basis of written submissions without an oral hearing.
- e. The venue for the internal review hearing will generally be in Adelaide, unless circumstances require a hearing in a different location, or by telephone conference or video link or other system or method of communication.

- f. If either party wishes to vary any of the standard directions or have an internal review heard at a location other than Adelaide, they should as soon as possible make their request to the Tribunal and give their reasons for making the request.

Part 8 Miscellaneous

17. Oaths and Affirmations for witnesses and interpreters appearing before the Tribunal

The presiding Member in proceedings may require that an oath or an affirmation be made by a witness or interpreter. The Member will generally require that an oath or affirmation be taken before a witness gives evidence or an interpreter provides interpreting services.

18. Citation of Decisions

- a. When citing or providing the Tribunal with a copy of a decision, parties may use and submit any of the following versions:
 - i. the version of the decision available from Australasian Legal Information Institute ('AustLII') in the 'Signed by AustLII' format; or
 - ii. a version of the decision published in a series of law reports by a commercial publisher or a council of law reporting.
- b. When providing a copy of an AustLII version of a decision to the Tribunal, parties are required to check that the copy provided has not been replaced by any more recent copy of the decision.
- c. SACAT decisions published on AustLII are authenticated reports of the Tribunal and may be relied upon as such.

Note: A 'neutral citation' is a citation in the style adopted by Australian courts and tribunals since 1998

19. Telephone and Video Hearings

At the discretion of a registrar or a Member, any conference or all or part of any hearing may be conducted either by telephone or video link or other system or method of communication.

20. Evidence by telephone or video link, etc.

- a. A party seeking to have his or her evidence or the evidence of a witness taken by telephone, video link or other system or method of communication should apply to the Tribunal for an appropriate direction.
- b. Where a party has been given permission for evidence to be given by telephone, video link or other system or method of communication, the party must:
 - i. take all steps necessary to facilitate the giving of evidence in that manner, including arranging for the witness to be available and to

have access to documents that are likely to be referred to during the hearing; and

- ii. provide the Registry with the contact details of the witness, his or her availability and any other information required by the Registry.
- c. The costs of a telephone or video link or other system or method of communication will be borne by the party who calls the witness, unless the Tribunal otherwise directs.

21. Audio and camera technology in Tribunal facilities

- a. Audio or video recording and transmission and the use of cameras of any kind, including the use of mobile phone cameras, is strictly prohibited on Tribunal premises without the express written approval of a registrar.
- b. Failure to abide by this policy may result in the confiscation of the recording equipment, cameras or mobile telephone while on Tribunal premises.
- c. Mobile phones are not to be used in Tribunal hearing rooms and must be switched off before entering a hearing room where a matter is to be, or is being, heard.

22. Commencement of Practice Directions

These Practice Directions will commence on 29 March 2015.

SCHEDULE 1

Administrative and Disciplinary Stream

1. Except as otherwise provided in this Schedule, each initiating application within the Tribunal's review jurisdiction is allocated to the Administrative and Disciplinary Stream.
2. Each initiating application within the Tribunal's original or review jurisdictions under one or more of the following Acts is allocated to the Administrative and Disciplinary Stream:
 - a. *Community Housing Providers (National Law) (South Australia) Act 2013*;
 - b. *Lobbyists Act 2015*;
 - c. *Local Government Act 1999*;
 - d. *Real Property Act 1886*;
 - e. *South Australian Housing Trust Act 1995*; and
 - f. *Valuation of Land Act 1971*.

Community Stream

3. Each initiating application within the Tribunal's original or review jurisdictions under the *Mental Health Act 2009* is allocated to the Mental Health List in the Community Stream.
4. Each initiating application within the Tribunal's original or review jurisdictions under one or more of the following Acts is allocated to the Guardianship and Administration List in the Community Stream:
 - a. *Advance Care Directives Act 2013*;
 - b. *Consent to Medical Treatment and Palliative Care Act 1995*;
 - c. *Guardianship and Administration Act 1993*.

Housing and Civil Stream

5. Each initiating application within the Tribunal's original jurisdiction under one or more of the following Acts is allocated to the Housing List in the Housing and Civil Stream:
 - a. *Residential Parks Act 2007*;
 - b. *Residential Tenancies Act 1995*.
6. Each initiating application within the Tribunal's original jurisdiction under the *Retirement Villages Act 1987* is allocated to the Retirement Villages List in the Housing and Civil Stream.