

Consultation on the South Australian Civil and Administrative Tribunal's Fee Waiver and Concession Policy

Introduction

On 26 September 2017 the independent review of SACAT conducted by the Hon David Bleby QC and the South Australian Government's response to the review were tabled in parliament.

The review contained 51 recommendations on how to improve SACAT's future operations across a range of areas. Six recommendations were made specific to the area of fees and fee waiver in SACAT.

The review recommended that a detailed fee waiver and concession policy be developed and that the SACAT website contain a clear explanation of the requirements of the process, together with appropriate forms.

SACAT has undertaken a comprehensive fee waiver and concession review and now seeks your feedback on the proposed policy.

We would be grateful if you could provide a response to sacat@sacat.sa.gov.au by **5.00 pm on Friday 29 December 2017**.

Background

On 1 December 2017, the *South Australian Civil and Administrative Tribunal (Fees) Regulations 2017* came into operation. The new Regulations introduced different fees depending on whether the applicant is an individual or prescribed corporation.

There are no application fees for cases in these areas:

- Guardianship
- Administration
- Mental health
- Consent to medical treatment and palliative care
- Advance care directives

except if the application is for transcript, or in an application for internal review of a SACAT decision where the applicant is not the person that the order is about.

The following persons or bodies are not required to pay a fee that would otherwise be payable under the regulations:

- a Minister of the Crown
- the Commissioner for Consumer Affairs
- the Public Advocate
- the Commissioner of Police
- a public sector employee acting on behalf of a public sector agency under the *Public Sector Act 2009*
- the South Australian Housing Trust.

The fees in SACAT are set by the South Australian Government by Regulation. This consultation does not extend to the fees set out in the *South Australian Civil and Administrative Tribunal (Fees) Regulations 2017*.

Initiating applications under most legislation, and applications for review of an order where the person was unable to attend the original hearing or be represented, attract level 1 fees (currently \$71.50).

Initiating applications relating to land valuation and lobbyists reviews, and applications for internal review, attract higher fees that differ depending on whether the applicant is an individual or a prescribed corporation (currently \$545 and \$765 respectively). These are referred to as level 2 fees.

A prescribed corporation is a corporation that is not a small business (that has less than 20 full-time equivalent employees and is not subsidiary of a corporation that has 20 or more full-time employees) or a not-for-profit organisation.

Recommendations by the Hon David Bleby QC

Fee levels and the fee waiver policy are regulators of accessibility to SACAT. Some of the main objectives of the Tribunal are to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate, and to be accessible by being responsive to parties, especially people with special needs.

The review found that the current broad fee waiver policy has contributed to the very substantial and unbudgeted increase in the number of applications in certain areas since the commencement of SACAT.

SACAT's current policy is that an application fee will be waived upon an applicant providing a concession card or proof that they are receiving legal aid, are under 18 years of age, or are in prison or detention.

If none of the above applies, an application can be made to have the fee waived on the basis of financial hardship and the application will be considered by a Deputy Registrar.

As a result of this policy, the review found that 27% of all applicants have their fees waived. The review noted that this has been subject of abuse.

It is important to maintain a balance between regulating demand for the services of the Tribunal and ensuring it remains accessible.

The review recommended relevantly in relation to fee waiver:

- That a fee concession policy be developed whereby, on presentation of satisfactory evidence to meet one of the conditions, the applicant will be entitled to a specified reduction of the application fee but not of the whole fee.
- 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.
- 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.
- That the SACAT Act be amended to create an offence of knowingly giving false or misleading information to the Tribunal or a Registrar.

The SACAT Act will be amended by the *Statutes Amendment (SACAT No 2) Act 2017* to insert a new section 93B which provides:

A person who knowingly makes a false or misleading statement for the purposes of, or in connection with, consideration by the registrar or the Tribunal (including the Tribunal as constituted of a registrar or other member of staff of the Tribunal) as to whether to waive, remit or make such other provision in relation to the payment of fees in respect of proceedings before the Tribunal, is guilty of an offence.

Maximum penalty: \$1 250 or imprisonment for 3 months.

Summary of the proposed fee waiver policy

In summary, the primary change proposed entails introducing reduced fees for concession card holders. Those who currently have their fees waived entirely will now be entitled under the policy to have a reduction in their fee. The proportion of the reduction depends on the type of application and the legislation the proceedings relate to.

Full fee waiver will still be available, but only to those who qualify on a more rigorous means-tested application or who are under 18, in detention or have been granted Legal Aid. Applications for full fee waiver must be supported by evidence.

Applications that were previously fee-free, based on subject-matter, remain so.

No change is proposed in relation to deferred or repayment of fees. Provision in the legislation and regulations allow for fees to be deferred or refunded on approval by the Registrar.

The policy is subject always to the exercise of discretion. More detail about the reduced fees is set out below.

Concession fee

SACAT is proposing to introduce a reduced rate in application fees upon an applicant providing evidence of concession.

The Concession Fee for level 1 fees for some initiating applications and applications for review for non-attendance will be 25% or $\frac{1}{4}$ reduction of the full fee (rounded down to the nearest whole dollar). On the current fee of \$71.50 for level 1 fees, the concession fee would be \$53.

The Concession Fee for level 2 fees for some initiating applications and applications for internal review will be 75% or $\frac{3}{4}$ reduction of the full fee (rounded down to the nearest whole dollar). On the current fee of \$545 for internal review applications the concession fee would be \$136.

To be eligible, applicants for a concession fee must provide a copy of an approved concession card:

- Pensioner Concession Card
- Health Care Card
- Commonwealth Seniors Health Card
- Department of Veterans Affairs Gold Card
- Student identification card (full-time students only).

It is proposed that the concession fee reduction will only apply to application fees and not to service request fees, such as transcript or inspection of files.

Service fees may be reduced or waived at the discretion of a Presidential member or registrar.

Land valuation and lobbyists reviews

From 1 December 2017, the *South Australian Civil and Administrative Tribunal (Fees) Regulations 2017* increased the applicable fees relating to reviews of land valuation and lobbyists decisions to \$765 for prescribed corporations and \$545 for individuals. Prior to 1 December 2017, the application fee for these applications was \$71.50.

The review noted that the Regulations prescribe a single fee regardless of the value of the property. A substantial number of the valuation reviews dealt with so far by SACAT have been in relation to the Valuer-General's valuation of residential properties for rating purposes. In most cases, the fee of \$545 would exceed the reduction in rates if the application were successful, denying reasonable access to some individuals.

Accordingly, SACAT is proposing that where an applicant has approved concession, to reduce the application fee by 75% or $\frac{3}{4}$ reduction for individuals (which on the current fee of \$545 would mean a concession fee of \$136).

Please see the Proposed Fee Schedule for full details of proposed full and concession fees on the SACAT website.

Financial hardship or special circumstances

SACAT will consider applications for full or partial fee waiver due to financial hardship or if it is in the interests of justice to do so in the circumstances of a particular case.

An application form for fee relief must be completed along with any supporting documentation.

The following documents must be provided in support of the application for waiver on the grounds of financial hardship:

- Bank statements from the last two months
- Centrelink statements and/or payslips for the last four weeks
- Recent tax returns; and
- Any other relevant financial information such as outstanding bills
- Other supporting documentation as required.

For further information please contact:

Clare Byrt

Principal Registrar

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