

sacat.

South Australian
Civil and Administrative Tribunal

SACAT's Expanding Jurisdiction

The Honourable Justice Hughes, President

Wednesday 27 June 2018

The story so far...

SACAT's jurisdiction is being conferred in stages.

The previous Government identified a large set of Acts from which conferrals were possible.

Conferring jurisdiction is done by way of an Act which amends each of the Acts from which jurisdiction is taken – an omnibus Bill

The former Attorney-General's approach was to go to Parliament in stages

SACAT is currently part-way through implementing stage 3 of potentially 5

The story so far...

Stage 1:

- **Residential Tenancies Act 1995**
- **Guardianship and Administration Act 1993**
- **Mental Health Act 2009**
- **Advance Care Directives Act 2013**
- **Consent to Medical Treatment and Palliative Care Act 1995**
- **South Australian Housing Trust Act 1995**
- Retirement Villages Act 2016
- Valuation of Land Act 1971
- Community Housing Providers (National Law) (SA) Act 2013
- Local Government Act 1999
- Residential Parks Act 2007
- Real Property Act 1886

The story so far...

Stage 2:

- **Firearms Act 2015**
- **Freedom of Information Act 1991**
- First Home and Housing Constructions Grants Act
- Housing Improvement Act 2016
- Lobbyists Act
- Controlled Substances Act

What we hear most

Housing & Civil

- Vacant possession for breach of agreement
- Bond disputes at end of tenancy

Community

- Guardianship and Administration applications
- Reviews of Inpatient and Community Mental Health Treatment Orders

Administrative & Disciplinary

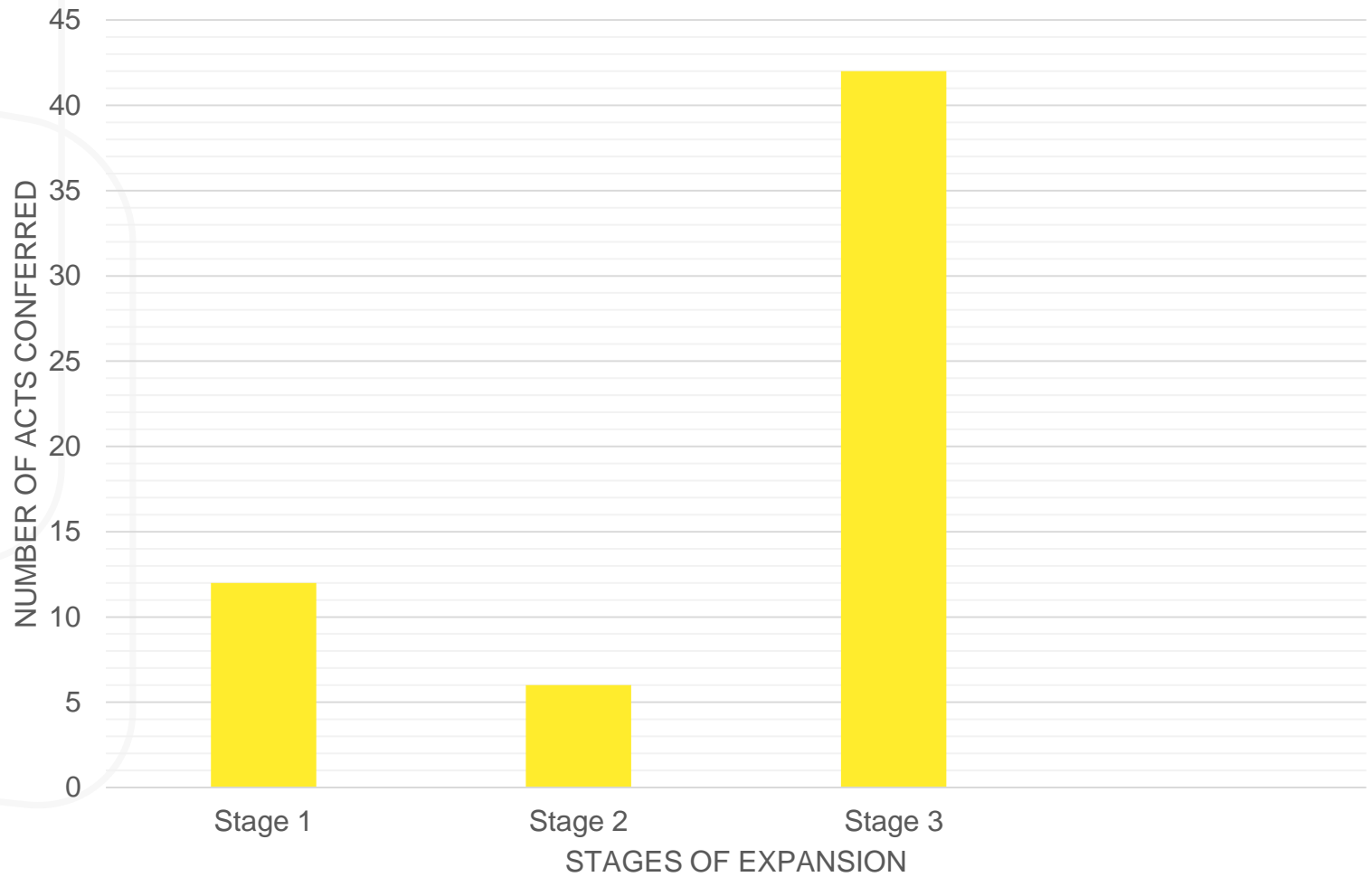
- Review of Housing SA decisions re tenancies
- FOI decision reviews
- Firearms licence cancellation reviews

Helicopter view

- High volume hearings
- Short hearings, fast outcomes
- Unrepresented parties
- Original and review jurisdiction
- End-to-end electronic Tribunal
- Approximately 50 staff, 50 Members
- 2 sites, co-locating next financial year
- \$71.50 application fee, \$545 on review (individual)*

*(some proceedings and some litigants excluded from fees, others attract waivers and concessions)

SACAT Expansion stages



Stage 3 - Phases

Stage 3 is effected by the Statutes Amendment (SACAT No 2) Bill.

It has 4 phases:

- December 2017
- February 2018
- Proposed July 2018
- Proposed October 2018

The phases are designed for smooth introduction of new jurisdiction based on the work required for implementation.

Stage 3 – phase 1

Phase 1 December 2017:

- Animal Welfare Act 1985
- Aquaculture Act 2001
- Emergency Services Funding Act 1998
- Fisheries Management Act 2007
- Food Act 2001
- Historic Shipwrecks Act 1981
- Plant Health Act 2009
- Primary Produce (Food Safety Schemes) Act 2004
- Safe Drinking Water Act 2011
- Tobacco Products Regulation Act 1997

Stage 3 – phase 2

Phase 2 February 2018:

- Agricultural and Veterinary Products (Control of Use Act) 2002
- Associations Incorporation Act 1985
- Co-operatives National Law (South Australia) Act 2013
- Environment Protection (Sea Dumping) Act 1984
- Environment Protection Act 1993
- Petroleum and Geothermal Energy Act 2000
- Petroleum Products Regulation Act 1995
- Primary Industry Funding Schemes Act 1998

Stage 3 - Phase 3 – July 2018

Phase 3 – Proposed for July 2018

- Adoption Act 1988
- Births, Deaths and Marriages Registration Act 1996
- Land Acquisition Act 1969
- Partnership Act 1891
- Police Superannuation Act 1990
- Public Corporations Act 1993
- Southern State Superannuation Act 2009
- Superannuation Act 1998
- **AND : Dog and Cat Management Act 1995**

Phase 3 – expected volume

- Adoption Act 1988
- Births, Deaths and Marriages Registration Act 1996
- Land Acquisition Act 1969
- **AND : Dog and Cat Management Act 1995**

Stage 3 - Phase 4

Expected October 2018

- Conveyancers Act 1994
- Crown Land Management Act 2009
- Electricity Act 1996
- Essential Services Commission Act 2002
- Gas Act 1997
- Harbors and Navigation Act 1993
- Land Agents Act 1994
- Land Valuers Act 1994
- Livestock Act 1997
- Local Government Act 1999
- Mines and Works Inspection Act 1920
- National Parks and Wildlife Act 1972
- Pastoral Land Management and Conservation Act 1989
- Supported Residential Facilities Act 1992
- Survey Act 1992
- Water Industry Act 2012
- **AND: Children and Young People (Safety) Act**
- **AND: Child Safety (Prohibited Persons) Act 2016**

Phase 4 – expected volume

- Conveyancers Act 1994
- Land Agents Act 1994
- Land Valuers Act 1994
- Children and Young People (Safety) Act 2017
- Child Safety (Prohibited Persons) Act 2016

Future stages

- Future stages 4 and 5 have not been submitted for approval by the Government as yet
- If they are to be progressed, it is unlikely to be in 2018

Procedure

- All recently conferred jurisdiction is administered within Admin and Disciplinary Stream
- Online application – no paper forms
- Directions hearings for more complex matters
- Where other side is unrepresented, SACAT serves
- Where both parties are represented, usual practice
- Once on foot, submissions and evidence usually the subject of an order to exchange, even with unrepresented litigant

Decisions, Rules, Practice Directions and other information about SACAT

- Significant decisions are published on AustLii
- The Rules and Practice Directions are available on the SACAT website
- The SACAT Rules are under review internally and will be the subject of consultation
- SACAT issues electronic newsletters from time to time and has a social media presence:
 - Facebook: SouthAustralianCivilAndAdministrativeTribunal
 - Twitter: SACAT_CONNECT
 - LinkedIn: South Australian Civil and Administrative Tribunal

Practitioners and SACAT

A party to proceedings is entitled to appear personally, by counsel or, with leave and subject to the Rules, by other representative: s 56(1) SACAT Act

However, that is subject to the other Act under which the proceedings are brought to SACAT. Residential tenancies matters cannot proceed with representation unless certain conditions apply: s 113 RTA

A “person appearing” before the Tribunal is entitled to be “assisted” by another person as a friend: s 56(2) SACAT Act, unless otherwise determined by the Tribunal.

Working effectively with self-represented litigants

Duty to the Court and administration of justice: Rule 3 of Aust Solicitors' Conduct Rules

Tribunal Rule 4(b):

- Any person, including a legal practitioner, representing a party in proceedings must use their best endeavours to facilitate the just, quick and cheap resolution of the real issues in proceedings before the Tribunal and, for that purpose, must participate in the processes of the Tribunal and comply with directions and orders of the Tribunal.

Working effectively with self-represented litigants

What the Tribunal can do:

- Give information before hearings
 - Sources of assistance
 - What to expect
- Assist in hearings
 - Understanding the process

Working effectively with self-represented litigants

What a practitioner can do:

- Advise client of duties
- Obtain instructions to explain to the SRL
- Use the pre-hearing processes and ADR to attempt to narrow or resolve the issues
- Assist the Tribunal in the hearing

Working effectively with self-represented litigants

Consider the interstate guidelines for practitioners interacting with self-represented litigants:

- Queensland
- New South Wales

Working effectively with self-represented litigants

Neither

- the adversarial nature of civil proceedings; nor
- the duty to the client; nor
- the availability of free legal services; nor
- the court or tribunal's obligation to ensure a fair hearing

Eliminate the desirability of assistance from practitioners to SRLs prior to and at ADR or hearing.

The Tribunal will strive to ensure that Rule 4(b) has its intended effect so as to maximise the Tribunal's success in achieving its legislated objectives.

Any questions?

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