

Disputes Where One Party is Interstate

Applying to SACAT to resolve a residential tenancies dispute where one party is interstate

Why do these disputes have to be dealt with differently?

There were two major legal decisions made in 2018.¹ These decisions decided that only courts exercising federal jurisdiction could deal with a dispute between people who reside in different states of Australia. This meant that SACAT cannot deal with tenancy disputes with parties who are residents of different states.

The SACAT Act was then amended to allow these disputes to be transferred to the Magistrates Court. SACAT has auxiliary Magistrates and Judicial Registrars appointed who are able to resolve tenancy disputes where one party is located interstate.

How does this work in practice?

Step One:

Even if you think that SACAT is unlikely to be able to deal with an application because a party lives interstate, if SACAT would (except for that issue) usually deal with that application, then the application must still be made to SACAT.

Note: If you are making an application and live interstate, then you may lodge a statutory declaration which states this (see notes below about relevant information to include).

Step Two:

SACAT will then decide whether or not it can deal with the application.

If SACAT determines that it does not have the power (or there is some doubt) because a party lives interstate, then SACAT will make an order transferring the application to the Magistrates Court.

You do not need to lodge any further documents or pay any further fees for your application to be transferred to the Magistrates Court.

Note: If you lodged a statutory declaration about your residency, and if the Tribunal is satisfied that it is appropriate to do so on the basis of that information, the Tribunal may make the referral to the Magistrates Court without conducting a hearing.

Step Three:

Notices of hearing will be sent to the parties about the hearing in the Magistrates Court.

The Magistrate or Judicial Registrar dealing with the matter will usually conduct the hearing at SACAT's premises. The Magistrate or Judicial Registrar will conduct the hearing in the same general manner as a Tribunal Member would have conducted a hearing at SACAT. The form of order will be similar to the form of orders used by SACAT. Any order made for vacant possession by SACAT will also be enforced in the same way, by requesting a bailiff.

How do I know when this issue arises?

The question of whether a party is a resident outside the state will be decided on a case by case basis. The following is a list of factors which may be relevant:-

- How long has the person lived interstate?
- Did the person move interstate for work and if so
 - When did the person move?
 - Was that intended to be a long term or short term arrangement?

¹ *Burns v Corbett* [2018] HCA 15; *Raschke v Firinauskas* [2018] SACAT 19.

- Does the person have an “end date” for the arrangement?
- Does the person intend to return to South Australia in the near future?
- Does the person rent a house interstate or has the landlord bought a house to live in interstate?
- Where is the person’s car registered?
- What is the address shown on the person’s driver’s licence?
- Is the person on the electoral roll interstate?

If an applicant considers that there is some doubt about whether or not they are resident interstate, then the applicant (or their representative) should be prepared to give evidence to the Tribunal about that in a hearing.

Are there exceptions?

The following are some general guidelines:

- SACAT can deal with applications in which one party is a corporate entity or an organisation other than an individual person which may operate from another state
- SACAT can deal with applications in which one party is resident overseas
- SACAT can deal with applications in which a landlord is resident in a territory.
- The relevant time at which the issue of residency is when the dispute arose – and so, for example, if the dispute arose before one of the parties moved interstate then it is likely that SACAT can still deal with the dispute

Note: Even where the parties agree, SACAT cannot make an order to record that agreement if one of the parties is resident interstate.

Who can assist me?

There are numerous organisations who provide free legal advice to eligible people and may be able to assist you.

RentRight SA

- **Phone number:** 1800 060 462
- **Website:** www.syc.net.au/rentrightsa

Legal Services Commission

- **Phone number:** 1300 366 424
- **Website:** www.lsc.sa.gov.au

Tenancies Advice (Consumer and Business Services)

- **Phone number:** 131 882
- **Website:** www.cbs.sa.gov.au/sections/renting

Real Estate Institute of SA

- **Phone Number:** (08) 8366 4300
- **Website:** www.reisa.com.au

Contact the Tribunal

If you would like to speak to a staff member about applications where one party is interstate, please telephone SACAT on 1800 723 737 (select option 4 and then option 1).

This information sheet does not constitute legal advice and does not relate to the circumstances of any individual matter. If you wish to have legal advice you should seek that independently.