

Applications for Staying an Order



The process so far

If you are dissatisfied with an order from SACAT, you may have applied, or are thinking about applying, for an internal review (an internal review is a request to have a decision reconsidered by a different Member of SACAT). While you are waiting for your hearing for internal review, **the original order is still in force**. This means that all of the parties, including you, are still required to comply with the order even if you have applied, or intend on applying for, an internal review.

However, you can ask for a stay of the order.

What is a stay?

If granted, a stay puts the order on hold until your internal review matter is heard (or some other date determined by SACAT). A request for a stay is decided urgently by a legally-qualified Member of SACAT. The following conditions must be met for a stay to be granted:

- SACAT considers that you have an arguable case on internal review AND
- the consequences for you if a stay is not granted are more significant than the consequences for the other party if the stay is granted.

To demonstrate an arguable case you do not have to prove your case. However, you do need to state what your argument is and what evidence supports it.

If SACAT considers that you have an arguable case, it will usually be necessary to ask the other party what their attitude is to the stay. Their view is important, particularly about the second part of the test, which requires SACAT to weigh the competing interests of both parties.

Depending on the urgency, a stay application may involve a telephone conference with one or

both of the parties at the same time or separately. It may also be decided solely on your request in writing. How it is decided is a matter for SACAT to assess.

SACAT will take steps to decide the stay application once the fee for the related internal review application has been paid or waived (see “Fees and charges” below).

If a stay is granted, the operation of the previous decision will be placed on hold.

If a stay is refused, it does not mean the Internal Review is finalised. The previous order will still be in effect and can be enforced despite the pending review. The Internal Review will still proceed if you would like it to.

Who can apply?

Any party to the initial proceedings for which the order was made can apply for a stay of that order.

Examples of where a stay request might be successful

Jane, a tenant, seeks review of an order that she must leave the rented property in 7 days. The order is to take effect in 2 days' time. Jane did not attend the hearing. Jane states that there is a good reason that she did not attend the hearing – she was in hospital. Jane states that she does not dispute the order for vacant possession, but seeks to be given 3 weeks to leave as she will be discharged from hospital in one week and she wants 2 further weeks to find alternative accommodation. Jane offers to pay \$600 of the \$1200 rent that is owing to Chris, the landlord, to have the order stayed until the review can be heard, which will be in 5 days' time. Chris is

primarily concerned about receiving rent, which has not been paid for over a month.

- *Taking some action to protect the interests of the other party may assist the likelihood of a stay being granted.*

Bob has made an application for a review of a guardianship order which appointed his sister, Robyn, guardian of their mother. The decision was made urgently because their mother, who is in hospital, was offered a nursing home room. Bob was unable to participate in the original hearing because he works in the far north of the State and was not able to be contacted prior to the hearing. Bob wants to be made joint guardian with Robyn. Bob says that the urgency of the appointment has reduced because their mother has become ill again and now will be remaining in hospital for some further weeks. Robyn says she opposes Bob being appointed because he is always away working.

- *If circumstances have changed such that an urgent decision is no longer urgent, SACAT may stay the order and await the outcome of the review.*

Examples of where a stay request is unlikely to be successful

Rauf, a tenant, has been allowed to remain in his rented property on condition that he make certain payments at certain times. If he does not make a payment, he must leave the property within 24 hours and if he does not do so, the landlord can request the bailiff to evict him. Rauf fails to make a payment and does not move out. After the time that he is required to move out, he submits an internal review and requests a stay of the order. The internal review application states that Rauf does not have enough money to pay the ordered amount but has nowhere else to live.

- *Becoming homeless does not guarantee that a stay will be granted.*

Giulia, whom SACAT has determined has a mental illness, has been ordered by SACAT to comply with treatment for that illness as directed by her medical team. She does not agree with SACAT's finding and lodges an internal review. She asks for a stay of the order because she disagrees that she has a mental illness and disagrees that she needs the treatment. In her application for review, she states that she is in the process of finding a doctor to support her views.

- *SACAT is unlikely to issue a stay where it has already weighed the available evidence and decided in favour of one party, simply because the other party believes that they will be able to gather evidence in the future to overturn the decision.*

If you want to proceed to seek a stay, you need to communicate that, with your reasons, to SACAT. SACAT may forward your request to the other party to obtain their views before making a decision.

Requirements for SACAT to consider a stay application

When lodging an application for a stay, you must appreciate the time it will take SACAT to consider the application. This includes the availability of a legally qualified Member to consider the application, and the availability of the other party to respond if required. There must be a reasonable window of time for a proper consideration of the application before the order it relates to takes effect.

For example, SACAT makes an order requiring Jill, a tenant, to vacate the rented property by 12 midday on a specified date. Jill rings SACAT on the specified date at 10.00am, 2 hours before she is required to vacate the rented property under the order. She is ringing to lodge an internal review application and request a stay of the order requiring her to vacate.

- *It is unlikely that SACAT will be able to schedule a legally qualified Member and hear a response from the other party (if required) within this short timeframe. You should lodge and pay for your Internal Review application as soon as possible after the order is made.*

Fees and charges

There is no fee directly applicable to an application for a stay, however, an application for a stay will not be considered unless the fee for the related internal review application has been paid.

SACAT may waive or reduce the application fee in certain circumstances. In Community Stream matters, if the person who is the subject of the order lodges the internal review application, the application fee is not applicable as the Person the order is about is fee exempt.

For further information relating to fees and fee waivers see:

<http://www.sacat.sa.gov.au/bringing-a-case/fees> and <http://www.sacat.sa.gov.au/bringing-a-case/fees/fee-exemptions-and-waivers>

Your application is not commenced until any applicable fee has been paid or waived by SACAT.

Fees can be paid on-line at the time of lodgement. Alternatively, there is an option to 'pay later' on the application form. If you select this option, you will be issued with an invoice and be provided 7-14 days to make payment.

If you do not make the payment in time, SACAT will take no further steps to progress your application.

Options for submitting your stay application

If you wish to file an application for a stay, you can do so using one of the following options:

- **On-line:** Include your request for a stay as part of your application for Internal Review. You can access the Internal Review online application form at www.sacat.sa.gov.au.
- **Visit us in person:** visit SACAT's office at Level 4, 100 Pirie Street and use a computer at one of SACAT's public kiosks. SACAT staff can assist you to lodge an application.
- **Telephone:** you can reach us on our free call number 1800 723 767 (press 1 and then 4) and ask for assistance in completing the on-line stay application.
- **By letter:** write us a letter and email or post it to us. You must include all the information required by the SACAT Rules. You may wish to use the **enclosed** template and attach it to your online Internal Review application (at the time of lodgement or at any time after lodgement).

This fact 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.