

Disciplinary Matters



Applications for disciplinary action

Applications for disciplinary action can be made to SACAT when it is alleged that individuals of certain occupations and professions have acted in a way that may require disciplinary action to be taken. This can include where a person has acted:

- unlawfully;
- improperly;
- negligently;
- unfairly;
- in some other way outlined by the relevant Act.

This Fact Sheet deals with disciplinary matters about:

- builders
- conveyancers
- land agents
- sales representatives
- land valuers
- plumbers
- gas fitters
- electricians
- second-hand motor vehicle dealers
- surveyors
- towtruck drivers

Legislation

The relevant conferring legislation can be found below:

- *Building Work Contractors Act 1995*
- *Conveyancers Act 1994*
- *Land Agents Act 1994*
- *Land Valuers Act 1994*
- *Plumbers, Gas Fitters and Electricians Act 1995*
- *Second-Hand Vehicle Dealers Act 1995*
- *Surveyors Act 1992*
- *Motor Vehicles Act 1959*

Local Government Councillors

SACAT also hears and determines disciplinary matters about local government councillors under the *Local Government Act 1999*. Those applications may only be lodged in certain circumstances by a person authorised in writing by the Minister or the Council or by the Chief Executive Officer of the Council.

Who can bring a disciplinary application?

Disciplinary action is brought in the public interest to maintain the standards of the relevant occupation or profession, to deter inappropriate conduct and to protect the public.

Depending on the relevant Act, disciplinary proceedings are usually brought by the relevant regulatory authority, for example the Commissioner for Consumer Affairs, or professional body, like the Institution of Surveyors. Those entities have dedicated resources to investigate complaints and, if necessary, bring disciplinary action against an individual at the Tribunal in the public interest.

Members of the public can also make an application directly to the Tribunal if they think a person of an occupation or profession listed above has acted in a way that constitutes grounds for disciplinary action. However, such action is not brought to compensate consumers but to protect the public.

What is involved in a disciplinary matter?

Where an application for disciplinary action has been made to the Tribunal, the applicant must be able to:

- identify the legislative provision they wish to rely on;
- state and describe the conduct said to justify the disciplinary findings, and identify the relevant legislative provisions relied upon;
- identify the facts, acts or omissions alleged to constitute the conduct that justifies disciplinary action;
- provide any supporting documents; and
- pay any relevant application fees.

Disciplinary matters are adversarial proceedings and require the participation of both the applicant and respondent to put forward their version of the facts and applicable law before the Tribunal. The parties may need to call witnesses (including

expert witnesses) and provide documents to prove or defend the allegations.

The applicant has an obligation to prove the allegations against the person they are bringing a disciplinary action against, this is known as the “onus of proof”. The allegations must be proved by the applicant on the balance of probabilities.

Do I need to be legally represented?

Parties do not need to be legally represented in SACAT, but it can be helpful to seek legal advice before instituting or defending disciplinary proceedings. Various organisations in South Australia provide free legal advice or assistance. Find out more about legal representation at SACAT on our webpage, [Preparing for a hearing](#).

Can costs be awarded against a party?

Yes, because the proceedings are adversarial and one or the other party may be legally represented. At the end of the proceedings, depending on the outcome, the Tribunal may order one party to pay the other party’s legal and other costs related to the proceedings.

Process for disciplinary matters

Once an application has been made, and any relevant fee has been paid, SACAT will provide a copy of the application, and any documents provided in support, to the person who is the subject of the application.

Within 21 days of receiving a copy of the application, the person must provide a response to SACAT.

SACAT will schedule a directions hearing shortly after the application is received. The directions



hearing will usually be held four to six weeks after the application is first made.

At or after the first directions hearing, the Tribunal may decide that a further directions hearing is needed, refer the matter to a conference, or may decide that the matter is ready to go to a final hearing, where it will make a decision about the application.

What SACAT can do in disciplinary matters

If the Tribunal finds that there has been unlawful, improper, negligent, unfair or other relevant conduct it can decide that disciplinary action should be taken in accordance with the relevant Act.

Depending on the relevant Act, a range of orders can be made by the Tribunal, including, for example:

- a reprimand;
- a fine;
- cancellation or suspension of a licence, registration or certificate;
- disqualify the person from holding a licence, registration or certificate;
- impose a condition on a licence, registration or certificate.

Any fine that is imposed by the Tribunal is payable to the relevant regulatory authority or professional body and not to the individual who has brought an application.

What SACAT cannot do in disciplinary matters

As a result of disciplinary action taken at the Tribunal, SACAT **cannot**:

- investigate a complaint made against a person;
- resolve private disputes;
- make orders to compensate a consumer for reimbursement of any monies under the terms of a contract or agreement;
- enforce a duty to repair;
- take immediate action about a person's conduct.

If you are seeking any of the outcomes listed above, please speak to the relevant regulatory body or professional board about your options in lodging a complaint or seek legal advice where appropriate about any other options.

Fees

Please be aware, that if you want to bring an application for disciplinary action to SACAT for resolution, you may be required to pay an application fee before your application will be accepted.

Contact the Tribunal

If you would like to speak to a staff member about the disciplinary jurisdiction of the Tribunal, please telephone SACAT on 1800 723 767

(select option 4, then option 7)

*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.*