

Changes to the *South Australian Public Health Act 2011*: Farewell Appeals, hello Reviews!

The *Statutes Amendment (SACAT) Act 2019* (“the **Act**”) was assented to on 11 July 2019. The purpose of this Act includes amendments to various legislation for the purposes of vesting jurisdiction in the South Australian Civil and Administrative Tribunal (“**SACAT**”).

Relevantly, the Act operates to amend the *South Australian Public Health Act 2011* (“the **SAPH Act**”) so that there is no longer a right of appeal in the District Court against section 92 notices. Instead, there will be a right of review to the SACAT.

The Act was proclaimed by notice in the Gazette on 8 August 2019. However, the commencement of numerous provisions, including the amendments to the SAPH Act, have been suspended to a future date, to be fixed by subsequent proclamation. This suspension enables the SACAT to prepare for the transfer to it of this new public health jurisdiction (amongst others).

The amendments to the SAPH Act by the Act address one of the issues raised in the recent review of the SAPH Act (namely, that consideration is given to the transfer of jurisdiction from the District Court to the SACAT in respect of challenges to section 92 notices).

Once proclaimed, the amendments will operate so that any person aggrieved by a section 92 notice (or, a decision by the Public Health Review Panel under section 95 of the SAPH Act relating to a notice issued to secure compliance with the general duty under section 56 of the SAPH Act), may apply to the SACAT for a review of that decision.

The SACAT is intended to operate as a cost-effective option for persons who wish to challenge a decision by a council to issue a notice under the SAPH Act. The review process is less formal than appeal procedures in the District Court. The SACAT Act requires a conciliation conference to be held in the first instance, to provide the parties with an opportunity to resolve the matter without progressing to a full hearing.

Where a relevant application for review is made to the SACAT, the council will be required, within 21 days, to prepare a book of documents that include the information relied upon to inform its decision and, a ‘statement of reasons’ that complies with the requirements under section 35 of the SACAT Act, setting out why the decision was made.

The SACAT is not an unfamiliar jurisdiction for Local Government. A number of Acts administered by councils already provide for a right of review to the SACAT - one example being the *Dog and Cat Management Act 1995*. We are, of course, experienced in representing councils in SACAT proceedings and are able to assist councils in meeting their obligations in relation to any review proceedings.

We will monitor and keep our readers informed of the date the transition to SACAT takes effect. In the meantime if you have any questions in relation to the amendments please contact Cimon Burke via cburke@kellyjones.com.au or on 8113 7105 or Ronan O'Brien via robrien@kellyjones.com.au or on 8113 7116.