

Info Sheet 14

Enforcing Orders

State Administrative Tribunal (SAT) orders are enforced in different ways depending on the type of order. They fall into these general categories:

- Final order for the payment of money.
- Final order other than for the payment of money.
- Final order which become the decision of a government body.
- Procedural orders.

The party having the benefit of a final order is responsible for the enforcement of that order.

Enforcement by civil proceedings

Monetary orders

A monetary order is enforced by lodging the order with the 'court of competent jurisdiction'.

The court of competent jurisdiction depends on the value of the amount payable.

- Magistrates Court - \$75,000 or less;
- District Court - more than \$75,000, and not more than \$750,000.
- Supreme Court - unlimited monetary jurisdiction.

To file the order for enforcement, you need:

- A copy of the order that the SAT Executive Officer has certified to be a true copy; and
- The party's affidavit as to the amount not paid under the order; and,
- If the order is to take effect on any default, as to the making of that default.

The court won't charge a fee to file an order for enforcement (as required by section 85 of the State Administrative Tribunal Act 2004), but once it is filed it is enforced according to the procedures of that court, which may involve enforcement fees. SAT does not enforce its orders. You should seek advice from staff of the relevant court or a legal practitioner if you require assistance with the court's procedures.

Non-monetary orders

A non-monetary order is usually an order requiring another party to do or refrain from doing something. They are enforced in the Supreme Court.

To file a non-monetary order in the Supreme Court, you need:

- A certificate of 'appropriateness for enforcement'. You can write to SAT and request this certificate. This is completed by a SAT judicial member who considers the nature of the decision and determines whether it is appropriate for filing in the Supreme Court. The range of non-monetary orders available means this is more complicated than for monetary orders.
- A copy of the order certified by SAT.
- An affidavit describing the non-compliance.

The same conditions apply regarding filing fees as for monetary orders.

In determining whether a decision is appropriate for filing in the Supreme Court, SAT will consider all the circumstances of the case, including (but not limited to) the following:

- 'Whether the applicant for the certificate has provided prima facie evidence on non-compliance with an order of SAT (for example, by filing an affidavit, a witness statement of a statutory declaration).'
- 'The nature of the order made by SAT.'
- 'Whether there has been a complete failure to comply, or a partial failure to comply with SAT's order'.
- 'Whether the failure to comply is attributable to ambiguity in the order of SAT.'
- 'Whether the party entitled to the benefit of the order has agreed to accept performance in a different way.'

Review Jurisdiction

There is an exception to the normal process for monetary and non-monetary orders. If the SAT order varies or replaces the decision of a government body such as a Development

Assessment Panel, the SAT order is treated as though it is a decision of the original decision-maker. SAT's ability to make this type of order comes from section 29 of the State Administrative Tribunal Act 2004.

Due to being treated as a decision of the original decision-maker, it is enforced or appealed according to the legislation that applies to that decision-maker, rather than SAT's legislation. You should consider obtaining independent legal advice if this applies to your situation.

Enforcing procedural orders

In the course of a proceeding at SAT, the Tribunal often makes orders of a procedural kind. SAT has powers to deal with a party's failure to comply with procedural orders in various ways.

If a party to a proceeding fails to comply with procedural orders made by SAT leading up to a final hearing, or the making of final orders, the party aggrieved by the default of the other party may apply to SAT to deal with the default.

Amongst other things, SAT can consider striking out the proceeding under section 48 of the State Administrative Tribunal Act 2004 by:

- making a costs order against the defaulting party;
- initiating proceedings for contempt against the defaulting party under section 100 of the Act; or
- prosecution for an offence may be instituted by SAT under section 95 of the State Administrative Tribunal Act 2004 where a person fails to comply with a SAT order. This action is at the discretion of SAT. A person found guilty of an offence under section 95 of the Act may have a penalty of up to \$10,000 imposed. The making of a section 95 order may lead to a criminal prosecution if the circumstances require such an order.

General advice

As explained above, it is not a function of SAT ordinarily to take enforcement action in relation to its orders. SAT also is not in a position to give a party advice about what particular type of enforcement action they should choose to take. If a party requires further information about how they should go about enforcing a SAT order, they should seek independent advice from a legal practitioner.