

State Administrative Tribunal (SAT) decisions under the *Building Services (Complaint Resolution and Administration) Act 2011* may be eligible for internal review at SAT.

There is no automatic right to a review and you must apply to SAT for 'leave' to have the decision reviewed.

What type of decisions can be reviewed?

Applications under section 38 and section 43 of the *Building Services (Complaint Resolution and Administration) Act 2011* can be reviewed, if the decision was not made by a SAT judicial member.

How do I apply for a review?

You lodge an application for review by completing an application form which can be created on the eCourts portal <https://eCourts.justice.wa.gov.au/eCourtsPortal/>.

You have 30 days from the date of the decision to apply for leave.

The date of the decision will be on the final order you receive from SAT.

What happens if it's been more than 30 days since the first decision?

The time period may be extended by SAT after considering:

- the extent of the delay,
- whether the delay is fully and satisfactorily explained,
- the prospects of success of the proposed review, and
- any prejudice to the other party arising from the delay.

Make your application as normal, and the delay will be discussed at the leave application hearing (see below).

When will leave to review be granted?

SAT has a broad discretion to grant leave but the following questions will guide their considerations:

- Was there a substantial injustice?
- Was the decision incorrect?

Substantial injustice

SAT will consider whether refusing leave to review would result in a substantial injustice. If the value of the dispute is trivial, refusing leave to review would generally not lead to a substantial injustice. The significance of the amount in dispute may depend upon the value of the building work out of which the dispute arose.

In some cases it could be sufficient to show there is a significant question of law to be considered.

As the discretion to grant leave is broad, it may be possible to point to some other feature that would lead to a substantial injustice.

Incorrect or doubtful decision

Is there sufficient doubt the decision was correct to justify a review?

It's not enough that the matter was not decided in your favour. SAT is only likely to review a decision on this basis if there is no discernible basis for the decision or natural justice requirements have been breached.

What happens at the leave application hearing?

Sometimes the leave application is given a separate hearing, and other times SAT will hear the leave application and the review at the same time.

Deciding the entire matter at the leave hearing

If the issues raised are particularly technical, such as the interpretation of the building contract, or of a statutory provision, SAT will hold a single hearing at which both the application for leave, and the review, will be heard together.

Further issues, such as compensation or whether building work is defective, may be determined at a later hearing.

Leave granted and hearing date set

If leave is granted, the review hearing will take place at a later date.

Leave isn't necessarily granted for every ground of review. A review can be restricted to only some of the reasons a review was requested.

If partial leave is granted, SAT will give detailed reasons for the grounds which are refused, and briefly indicate the reasons for the grounds which are proceeding to review.

Can I present new evidence at the leave application hearing?

The hearing is usually limited to the evidence put before the original hearing.

New evidence may be permitted, but only if:

- the evidence couldn't have been presented at the original hearing with reasonable diligence,
- the evidence is likely to have led to a different result, and
- the evidence is credible.

The review hearing

If leave is granted, the review is a complete rehearing of the proceedings.

This means the review hearing is not limited to the material presented at the original hearing.

SAT can consider new material, even if it did not exist at the time the original decision was made.

In most cases, reviews consider the transcript and evidence of the original hearing, supplemented by any necessary further evidence.

In appropriate cases, SAT may conduct an entirely fresh hearing, at which all evidence is heard again. This may assist the hearing of the matter if it is important to cross-examine witnesses, or if the review relies on demonstrating inconsistencies in either party's case.

Depending on the circumstances of each case, the review may be limited to a particular issue or issues to determine liability. If liability is decided in favour of the applicant, a further hearing will be held to determine the

remaining issues, such as an appropriate amount of compensation or whether particular remedial building work is defective.

Further information

Practice Note 13 - Review Proceedings under the *Building Services (Complaint Resolution and Administration) Act 2011* which can be found on the SAT website www.sat.justice.wa.gov.au.