



Review of the *Mental Health Act 2009 (SA)*

Fact Sheet 7 – SACAT and Legal Representation

SACAT and Legal Representation in the *Mental Health Act 2009 (SA)*

The South Australian Civil and Administrative Tribunal (“SACAT”) plays an important role in making or reviewing various orders or decisions. The Community Stream of SACAT can make and review certain orders about people with a lived experience of mental illness under the *Mental Health Act 2009 (SA)* (*MHA*).¹ SACAT is intended to act as an essential safeguard in this area, ensuring that the rights and dignity of people with a lived experience of mental illness are respected. However, several issues have been identified with the way the *MHA* addresses access to legal representation for those dealing with SACAT.

Current Issues

There are two key issues. First, the *MHA* does not provide access to legal representation for families and carers before SACAT. It only provides for representation of the person to whom the proceedings relate. It has been suggested that the legal representation scheme within the *MHA* be extended to offer legal representation to family members and carers who apply for a review of a treatment order. How such an extension may be funded must also be considered.

Second, the *MHA* legal representation scheme does not entitle consumers (people with a lived experience of mental illness) to legal representation in cases where SACAT has made a decision and has been requested to review this decision (known as SACAT’s ‘original jurisdiction’). ‘Original jurisdiction’ means SACAT has been appointed as the original decision-maker and through an internal review process, is able to re-consider this decision. In these cases, SACAT has made a decision relating to a treatment order or Electroconvulsive Therapy. It is not reviewing a decision made by another party outside of SACAT (such as a psychiatrist). This means the wishes of consumers are not often heard before SACAT. It has been raised that extending the scheme for use in these cases could better support vulnerable people, improve access to justice and increase SACAT’s effectiveness and efficiency. SALRI is looking at possible changes to improve present law and practice.

Generally, it appears the *MHA* currently relies on consumers:

- a) knowing their rights to appeal;
- b) knowing they are entitled to a lawyer; and
- c) (as vulnerable people) presenting all relevant evidence or material at first instance without legal support.

Consultation Questions

1. Should the *MHA* be amended to entitle consumers to legal representation under the scheme in cases where SACAT reviews its own decision?
2. Should the *MHA* legal representation scheme be extended to provide representation to families and carers who apply for review of treatment orders?

¹ See generally, South Australian Civil and Administrative Tribunal, ‘Mental health’ (Web Page) <<https://www.sacat.sa.gov.au/get-started/mental-health>>.