

## Appendix 1 – Internal Review Mechanisms in other Australian jurisdictions

Jurisdiction	Internal review mechanism	Resource-intensiveness
<p>QLD</p> <p><a href="#">Queensland Civil and Administrative Tribunal Act 2009</a></p>	<p><u>Availability of internal review</u></p> <p>The <i>Queensland Civil and Administrative Tribunal Act 2009</i> has an extensive internal appeals process, including for residential tenancies disputes.</p> <p><u>Grounds for internal review</u></p> <p>In some circumstances, a party can appeal a decision made by QCAT if they can show evidence that when QCAT decided the matter, there was an error in fact, an error in law, or an error in law and fact.</p> <p><i>Procedural requirements:</i> The process for appealing a decision differs depending on whether the original decision was made by a judicial or non-judicial member of QCAT, whether the decision was an interim or final decision, and the amount of costs awarded in the original decision, if any.</p> <p><u>Restrictions on internal review</u></p> <p><i>Reviews of decisions made by non-judicial members</i></p> <p>If the original QCAT decision was made by a non-judicial member,<sup>1</sup> a party wishing to appeal the decision may appeal to QCAT's Internal Appeal Tribunal (<i>IAT</i>).<sup>2</sup></p> <p>Leave of the IAT is <i>always</i> required to appeal a decision of fact, or a decision of mixed law and fact.<sup>3</sup></p>	<p><u>Relevant data</u></p> <p>In the 2014-15 financial year, 540 appeals were lodged with the IAT, which was slightly less than the 586 appeals lodged in the 2013-14 financial year.<sup>5</sup> This represented less than 2 per cent of total QCAT lodgements.<sup>6</sup></p> <p>In the 2014-15 financial year the IAT had a clearance rate of 100 per cent, which was slightly higher than the clearance rate of 94 per cent in the 2013-14 financial year. The clearance rate is calculated by dividing the total number of matters finalised by the number of total number of lodgements.</p>

<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), Schedule 3.

<sup>2</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), Part 8 Division 1.

<sup>3</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 142(1), (3)(b).

<sup>5</sup> QCAT Annual Report 2014-15, p 16.

<sup>6</sup> QCAT Annual Report 2014-15, p 43.

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	<p>A hearing by the IAT involves a reconsideration of the original evidence. If a party is dissatisfied with a decision made by the IAT, the party can apply for leave to appeal to the Court of Appeal on a question of law.<sup>4</sup></p> <p><i>Review of decisions made by judicial members</i></p> <p>If the original QCAT decision was made by a judicial member, a party seeking to challenge that decision may only appeal to the Court of Appeal on a question of law, a question of fact, or a question of mixed law and fact. The party cannot appeal the decision to the Internal Appeal Tribunal of QCAT.</p>	
<p>SA</p> <p><a href="#">South Australian Civil and Administrative Tribunal Act 2013</a></p>	<p><u>Availability of internal review</u></p> <p>The <i>South Australian Civil and Administrative Tribunal Act 2013</i> provides for internal merits review of a decision at first instance of a Member or (with leave of a Presidential Member) a Registrar of the Tribunal.</p> <p>The Tribunal may determine applications for review.<sup>7</sup></p> <p><i>Procedural requirements:</i> Applications must be instituted within 1 month of the original decision, but this can be extended if the Tribunal is satisfied that it is just and reasonable to do so. In residential tenancies matters, time runs from the delivery of a statement of reasons.<sup>8</sup></p> <p><u>Grounds for internal review</u></p> <p>The Tribunal is to reach the 'correct or preferable decision but in doing so must have regard to, and give appropriate weight to, the decision of the Tribunal at first instance'.</p>	<p><u>Relevant data (30 March – 30 June 2015)</u></p> <p>In the period from 30 March 2015 (when SACAT commenced operations) to 30 June 2015, there were 44 applications for review out of 2694 total applications.<sup>10</sup> This represented approximately 2 per cent of applications. SACAT had a clearance rate of 90 per cent of applications it inherited at commencement. The clearance rate is calculated by dividing the total number of matters finalised by the total number of lodgements. The average listing time for review applications was lower than for applications in general: 6 days compared to 18 days.<sup>11</sup></p>

<sup>4</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 150.

<sup>7</sup> *South Australian Civil and Administrative Tribunal Act 2013* (SA), s 70.

<sup>8</sup> *Residential Tenancies Act 1995* (SA), s 39A.

<sup>10</sup> SACAT Annual Report 2014/15, p 22.

<sup>11</sup> SACAT Annual Report 2014/15, p 23.

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	<p>Upon review, the Tribunal will consider the material put before it at first instance, but it has the discretion to admit further evidence.</p> <p><u>Relationship with judicial review mechanism</u></p> <p>The SACAT Act also provides for appeals to the Supreme Court.<sup>9</sup> Subject to prescribed or statutory exceptions, a review under section 70 of the SACAT Act must be conducted before an appeal can be brought in the Court.</p> <p>On appeal, the Supreme Court carries out a rehearing. Its jurisdiction is not limited to considering questions of law and its powers are not limited to setting aside decisions affected by legal error.</p>	
<p>NSW</p> <p><a href="#">Civil and Administrative Tribunal Act 2013</a></p>	<p><u>Availability of internal review</u></p> <p>The New South Wales <i>Civil and Administrative Tribunal Act 2013</i> provides an 'internal appeal' right for certain decisions made by NCAT in certain circumstances.<sup>12</sup></p> <p><u>Grounds for internal review</u></p> <p>Parties can seek leave to bring an internal appeal as of right on a question of law, or with leave on 'any other grounds'.<sup>13</sup> In residential tenancies matters 'any other ground' includes that:</p> <ul style="list-style-type: none"> <li>• the decision of the Tribunal was not fair and equitable</li> <li>• the decision of the Tribunal was made against the weight of evidence, or</li> <li>• significant new evidence has arisen (being evidence that was not reasonably available at the time of the original decision).</li> </ul>	<p><u>Relevant data</u></p> <p>In the 2014-15 financial year there were a total of 608 internal review applications, equivalent to 0.9 per cent of total applications heard by NCAT.<sup>17</sup></p> <p>Of the 608 appeals lodged with NCAT, 1,132 appeal panel hearings had been held, and 522 appeals finalised.<sup>18</sup></p> <p>The clearance rate for internal appeals was 85.9 per cent. The 'clearance rate' indicates the capacity of the Tribunal to manage its workload.<sup>19</sup></p>

<sup>9</sup> *South Australian Civil and Administrative Tribunal Act 2013* (SA), s 71.

<sup>12</sup> *Civil and Administrative Tribunal Act 2013* (NSW), s 32.

<sup>13</sup> *Civil and Administrative Tribunal Act 2013* (NSW), s 80(2)(b).

<sup>17</sup> NCAT Annual Report 2014–15, p 7.

<sup>18</sup> NCAT Annual Report 2014–15, p 16.

<sup>19</sup> NCAT Annual Report 2014–15, p 27.

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	<p>The Appeal Panel may 'permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance', to be given in the new hearing as it considers appropriate in the circumstances.<sup>14</sup> Parties need to seek and obtain leave before bringing fresh evidence before NCAT in an internal appeal.</p> <p><u>Restrictions on internal review</u></p> <p><i>Review only available for certain classes of decision:</i> Reviews of some decisions are expressly limited to questions of law. For example, an appeal against a decision of NCAT following execution of a warrant of possession can only be brought in relation to a question of law, and not any other grounds, even with leave of the Appeal Panel.<sup>15</sup></p> <p><i>Requirement of 'substantial miscarriage of justice':</i> Applications for leave to appeal on 'any other ground' in residential tenancies proceedings must also demonstrate that they may have suffered a 'substantial miscarriage of justice'.<sup>16</sup></p>	
<p>ACT</p> <p><a href="#"><u>ACT Civil and Administrative Tribunal Act 2008</u></a></p>	<p><u>Availability of internal review</u></p> <p>The <i>Australian Capital Territory Civil and Administrative Tribunal Act 2008</i> provides for an internal review system, which applies to residential tenancies disputes.</p> <p><i>Procedural and threshold requirements:</i> A decision made by ACAT may be appealed on a question of either fact or law.<sup>20</sup> For an appeal to be heard, an</p>	<p><u>Relevant data</u></p> <p>In the 2014-15 financial year, 56 applications were lodged for an internal appeal, which was slightly more than the 55 appeals lodged in the 2013-14 financial year.<sup>23</sup> This represented just over 1 per cent of total ACAT lodgements.<sup>24</sup> Of the 56 applications</p>

<sup>14</sup> *Civil and Administrative Tribunal Act 2013* (NSW), s 80(3)(b).

<sup>15</sup> *Civil and Administrative Tribunal Act 2013* (NSW), Schedule 4 cl 12(2)(b).

<sup>16</sup> *Civil and Administrative Tribunal Act 2013* (NSW), Schedule 4 cl 12(1)(a), (b), (c).

<sup>20</sup> *ACT Civil and Administrative Tribunal Act 2008* (ACT), s 79(3).

<sup>23</sup> ACAT Annual Report 2014–15, p 11.

<sup>24</sup> ACAT Annual Report 2014–15, pp 9 – 11.

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	<p>application must be made to ACAT demonstrating that an error was made in the original decision in fact or in law, as leave from the ACAT Appeal President is required in order for an appeal to be heard.</p> <p><u>Procedure and remedies</u></p> <p>Upon receipt of an application for an appeal, the ACAT Appeal President must either request further information from the applicant, dismiss the application, decide to hear the appeal or decide to remove the appeal to the Supreme Court.<sup>21</sup></p> <p>The ACAT Appeal President may decide that the appeal be dealt with either as a new application or as a review of all or part of the original decision.<sup>22</sup> The appeal tribunal can confirm, amend or set aside an order or make any other order that it considers appropriate in the circumstances.</p>	<p>lodged for an internal appeal, 19 of these applications were residential tenancy appeals.</p> <p>In the 2014-15 financial year, 58 applications for internal appeals of an ACAT decision were finalised, which was slightly higher than the 46 applications that were finalised in the 2013-14 financial year.</p>

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<sup>21</sup> ACT Civil and Administrative Tribunal Act 2008 (ACT), Part 8.

<sup>22</sup> ACT Civil and Administrative Tribunal Act 2008 (ACT), s 82.