

This guide is intended to assist Foster and Kinship carers (Carers) understand the function of the Youth Court and identify how Carers can be part of the process.

The Youth Court is located at 75 Wright Street, Adelaide. It is established to deal with criminal proceedings involving children and young people over the age of 10, but under the age of 18, as well as adoption, surrogacy and child protection applications.

The Youth Court sits in Adelaide, suburban and regional locations. In addition to sitting at the Youth Court in Adelaide, the judicial officers based in Adelaide sit on a regular basis at Christies Beach, Elizabeth and Port Adelaide Magistrates Courts.

The Youth Court at Adelaide is the only Court hearing adoption and surrogacy applications as well as hearing applications lodged pursuant to the *Children and Young People (Safety) Act 2017* (CYPS Act). These are primarily applications to place a child or young person under the guardianship of the Chief Executive of the Department for Child Protection (DCP). Upon application, the Youth Court may make orders:

- placing a child or young person under the guardianship of the Chief Executive pursuant to either a long-term or short-term order;
- varying, revoking or discharging an existing guardianship order which may result in the child or young person being reunified with their biological family if satisfied this is appropriate under the CYPS Act, or
- granting long-term guardianship of a child or young person to a specified person or persons.

The Youth Court in Adelaide is presided over by a District Court Judge, Her Honour Judge Penny Eldridge, who has been designated as the Judge of the Youth Court. There are also three specialist Magistrates appointed to the Youth Court: Magistrate Oliver Koehn, Magistrate Luke Davis and Magistrate David White.

A Carer is not involved in the original decision to place a child under the guardianship of the Chief Executive, but a Carer is often in a very good position to provide useful information to the Court to assist in making the appropriate determination, given their knowledge of the child or young person in their care. Their rights to provide this input are set out in section 66 of the CYPS Act.

This Carer Guide sets out the key processes of the Youth Court and explains

- what rights you have to give input;
- how you can give input; and
- how Connecting Foster & Kinship Carers SA (CF&KC-SA) can help.

N.B. For the purposes of developing this Carer Guide the Youth Court process is described through the use of "steps". It is important to note the Youth Court may not follow each step in a linear process. There is no mandatory timeline of events as each case is different. This document is designed to provide context to the Youth Court and a guide as to what carers may expect.

CARERS RIGHTS IN THE YOUTH COURT

As a Carer, you are not a “party to the proceedings” in the Youth Court as, pursuant to section 51(1) of the CYPS Act the parties to a care and protection application are the applicant (usually DCP), the child or young person the subject of the application and each parent or guardian of the child or young person. However, the Court is interested to hear from you, given that you are in daily contact with the child or young person.

Pursuant to section 51(3)(b) of the CYPS Act, Carers must be given, “... a reasonable opportunity to make representations to the Court in any relevant proceedings”.

Before the trial: You can provide your input informally through DCP, or by attending the Court, or by writing to the Court.

At a trial: You must formally apply to participate in Youth Court trial. This involves lodging a form with the Youth Court Registry.

More information regarding this and the relevant procedures is provided below.

Care and Protection proceedings in the Youth Court

Step 1: DCP makes an Application for a Care and Protection Order

DCP sometimes reaches a view that the biological parents or guardians are not appropriate persons to care for a child or young person. In this instance DCP makes an application to the Youth Court seeking an order that the child be placed under the Guardianship of the Chief Executive of DCP, for a specified period of time. A copy of the Application is provided to the parents, and other parties.

Step 2: Parent responds to Application

Biological parents or guardians have a right to challenge the order sought by DCP. They can therefore file a document in response to the application, setting out their side of the story and why they believe the child or young person should not be placed under the guardianship of the Chief Executive. A copy of this document is provided to DCP and other parties.

Step 3: Youth Court makes a Care and Protection Order under section 53 of CYPS Act

If after a hearing or if needed, a trial, DCP is successful in their application, a Care and Protection Order is formally made by the Court placing the child or young person under the guardianship of the Chief Executive of DCP, with three month, six month, twelve month, and long-term orders commonly made.

Step 4: The Chief Executive of DCP places child

As the legal guardian of the child or young person, DCP then places the child or young person with a Carer or Carers.

CARER INPUT: This is when you as a Carer first become involved with a child or young person, as their approved Carer.

Step 5: DCP makes a fresh application to the Youth Court for further orders or makes an application to vary the original order

Following an initial order, DCP may make a further application:

- seeking further orders prior to the expiry of the existing order (this may be for a further short period, or may be for a long-term order);
- to vary the existing order, for example to place the child or young person under the long-term guardianship of someone else (e.g. a Carer under section 91 of CYPS Act); or
- to revoke the order.

At this stage, the parents may also lodge an application to vary or revoke orders and have the opportunity to respond to any applications made by DCP.

CARER INPUT: Again, a Carer is not a party to these proceedings and is not generally involved at this stage, but, if appropriate, they may make submissions to the Court, for example in the context of an application for long-term guardianship orders. The options are explained below.

Step 6: Pre-Trial Conference

If a Care and Protection application is not agreed between the parties, it will be listed for trial where all parties will have an opportunity to give evidence and a decision will be made by the Judge or Magistrate hearing the trial.

Prior to the application being listed for trial, a Pre-Trial Conference will be convened. This is an opportunity for all parties and their lawyers to sit down to try to reach an agreement to avoid a trial or to narrow the issues in dispute. The Pre-Trial Conference is overseen by a judicial officer.

If an agreement is reached, the Court will record the agreement as orders of the Court. If there is no agreement the matter is then listed for **Trial**, usually two to three months from the date of the Pre-Trial Conference.

CARER INPUT: There are a number of ways to have input into the pre-trial processes of the Youth Court.

Let DCP advise the Court of your views: Some Carers are happy to give their views to DCP and let them pass the information on to the Court.

Attend the Court: Other Carers choose to speak directly to the Court. This can be done by attending the Court at the appropriate date and time and advising court staff who you are, and why you are there. You may want to prepare something in writing to hand to the Court, or some notes of what you want to say, or both.

A CF&KC-SA Advocate can help you with your preparation and can attend the Court with you as your support (but cannot speak on your behalf). The Youth Court is a closed Court and you will be asked to sit in the waiting room until the Judge or Magistrate is ready to hear from you. A Youth Court employee will be on hand to tell you when the Court is ready for you, where to sit and when to speak

Write to the Court: A third way to have your voice heard is simply to write to the Court. This can be done by email or letter. You will need to make it clear in the email or letter which child you are referring to and that you are their Carer. You can then set out your views regarding what you consider to be in the best interests of that child or young person, and comment on how any Court orders might impact on you.

A CF&KC-SA Advocate can help you prepare this written submission.

Step 7: Status Conference

If a matter has been listed for trial, the Court may list the matter for a further hearing called a Status Conference, to determine if the Application is still contested. It is a check-in point for the Court to discuss the status of the matter and confirm the witnesses to be called and the likely duration of the trial.

CARER INPUT: Your rights at this step are the same as your rights at Step 6. You may allow DCP to speak on your behalf, attend the Court to speak directly to the Court, or write to the Court with your views. See above for more detail.

Step 8: Family Group Conference

The Court may at any time refer a matter to a **Family Group Conference (FGC)** pursuant to section 22 of CYPS Act. Either the Chief Executive or the Court may convene the FGC if they suspect that a child or young person is at risk and that arrangements should be made for their care. A referral may also be made by the Court pursuant to section 67 of CYPS Act to discuss or resolve a specific issue arising out of the hearing of an application. The FGC is convened by a 'coordinator' who records any decisions made at the conference. This conference process is separate to the Court process, but decisions made at the conference are reported back to the Court.

Matters can be referred to the Conferencing Unit from DCP at any point once there has been an identified risk.

CARER INPUT: Section 23 of CYPS Act lists the people who can attend the FGC including the child or young person themselves and their family members. You may also be able to attend a FGC as a person who has 'a close association with the child'. August 2020 (version 2)

or young person and who should, in the opinion of the coordinator, attend the conference' pursuant to section 23(1)(d) CYPS Act. If you want to attend an FGC, you must first write to the Conferencing Unit via the Youth Court Registry to seek permission. If you do not want to attend the FGC but still want your views to be heard, you can write to the Conferencing Unit, again via the Registry.

A CF&KC-SA Advocate can assist you in writing to the Conferencing Unit and also attend the FGC with you, to provide support.

Step 9: Re-Unification Court

The Re-Unification Court is presided over by a Judge or Magistrate. It is an informal process with participants sitting around a table. Lawyers are not involved, with the exception of the Child Representative who is a lawyer appointed independently for the child or young person, to act in their best interests. DCP staff are invited by the Court to give their view regarding their assessment as to the viability of re-unification and report on the progress of the parent or parents in addressing the child protection concerns and their engagement with relevant services. Parents are also asked for their view of their progress and whether they require any additional services or supports. Matters are referred to the Re-Unification Court where interim orders of up to 12 months have been made and an assessment as to the viability of re-unification is underway.

If re-unification is deemed to be viable, a re-unification care plan is prepared. If re-unification is deemed to be not viable, the matter is removed from the Re-Unification Court and referred back into open court to enable the parties to be legally represented.

CARER INPUT: Cares do not attend Re-unification Court hearings. However, your rights at this step are the same as your rights at Step 6. If you wish to place information before the Court, you may allow DCP to speak on your behalf or write to the Court with your views. Please refer to the Re-unification Court Carer Guide for more information.

Step 10: Trial

If the parents do not agree to the order being sought by DCP, the matter will be listed for trial. A **trial** can take 1-2 days, or longer in more complex cases. At the trial hearing the Judge or Magistrate will hear evidence from the parties and witnesses and will make a decision that is binding on all parties, subject to a right of appeal.

CARER INPUT: If you wish to participate in a trial you must make a formal application to the Court. This is done by completing a **Form CP5: Application for Interested Person(s) to be heard** (s 66 CYPS Act).

A CF&KC-SA Advocate can help you to complete the application and lodge it at the Youth Court Registry.

You may also want a lawyer to represent you at the trial. CF&KC-SA can give you the names of lawyers who work in this area of law.

The earlier you contact a lawyer the better – as they will need time to prepare.

Step 11: Judgment

If the matter has proceeded to trial, the Judge or Magistrate publishes their decision, and the reasons for their decision, in a judgment. The judgment will include the orders of the Court. Care and protection judgments are not published and are distributed only to the parties to the proceedings.

CARER INPUT: As a Carer is not a party to the proceedings, you will not be provided with a copy of the judgment by the Court. However, if you would like to obtain a copy, you can apply to DCP to be provided with one. Please note that due to the sensitive nature of the contents, this copy will be redacted and have any sensitive information deleted.

Carer support

For more information, or to discuss your personal circumstances, please contact us:

Email: support@cfc-sa.org.au

Freecall: 1800 732 272

For more guidance and assistance contact the Youth Court Registry,

Email: youthcourt@courts.sa.gov.au

Phone: 8204 0331

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