

This guide is intended to assist Foster and Kinship carers (Carers) understand the function of the South Australian Ombudsman and identify how Carers use this service.

Ombudsman SA (The Ombudsman) investigates complaints and audits South Australian government authorities and local government agencies. This includes decisions made by the Department for Child Protection (DCP).

The Ombudsman is located at Level 8, 95 Grenfell St Adelaide SA 5000, and can be contacted at:

Website: www.ombudsman.sa.gov.au

Phone: (08) 8226 8699

Powers of the Ombudsman

Investigation

The Ombudsman has broad powers to investigate the *administrative acts* of government departments or misconduct or maladministration in public administration (section 13 *Ombudsman Act*). An *administrative act* is any decision, proposal, recommendation or omission executed by an agency or any act undertaken in the functions of the agency (section 3 *Ombudsman Act*).

Conclusion of Investigation and Reporting

After an Ombudsman investigation is complete, the Ombudsman can form the opinion that an administrative act was in error, for example where the administrative act:

- appears to have been made contrary to law; or
- was unreasonable, unjust, oppressive or improperly discriminatory; or
- was executed in the exercise of a power of discretion, with an improper purpose or on irrelevant grounds or taking into account irrelevant considerations; or
- was done in the exercise of a power or discretion and the reasons for the act were not, but should have been, given; or
- was based wholly or in part on a mistake of law or fact; or
- was wrong.

The Ombudsman then makes a report and recommendations to the principal officer of the agency about whether:

- the subject matter of the investigation should be referred back to the appropriate agency for further consideration; or
- an action can be, and should be, taken to rectify, or mitigate or alter the effects of, the administrative act to which the investigation related; or
- the practice (in accordance with which the administrative act was executed) should be varied; or
- any relevant law to the situation should be amended or repealed; or

- the reason for any administrative act should be given; or
- any other steps should be taken.

Further Steps

After the recommendation is made, the principal officer then must report back to the Ombudsman on what steps they have taken to give effect to the recommendation. If no such steps have been taken, the principal officer must state the reason(s) why.

If no appropriate steps have been taken, the Ombudsman may make a report on the matter to the Premier. When such a report is made, copies of the report are forwarded to the South Australian Parliament to be read before Parliament.

Child Protection Complaints

The Ombudsman can investigate 'prescribed child protection complaints' for most actions taken by DCP. They can investigate complaints:

- surrounding children or young people who might be or have been at risk;
- surrounding mandatory notifications of suspicions of children who might be at risk;
- surrounding a DCP investigation of a child who may be at risk; or
- complaints for the benefit of children or young people in care.

PLEASE NOTE:

The Ombudsman cannot investigate decisions that are reviewable under the *Children and Young People (Safety) Act (CYP SA)*. Please consult the CF&KC-SA Reviewable Decisions Carer Guide for more information, available on the CF&KC-SA website.

Can I make a complaint to the Ombudsman?

You can make a complaint to the Ombudsman about an administrative act that directly affects or affected you. You can also make a complaint about misconduct or maladministration regardless of whether you are directly affected. (section 12B *Ombudsman Act*).

PLEASE NOTE:

Carers have 12 months from becoming first aware of the matter to contact the Ombudsman about the issue (s12C *Ombudsman Act*). However, the Ombudsman has discretion to entertain the complaint outside of the 12 month timeframe, where it is considered proper in the circumstances to do so (s12C *Ombudsman Act*).

Connecting Foster & Kinship Carers SA (CF&KC-SA) cannot make the complaint on behalf of Carers, as the organisation is not directly affected by the administrative act. However, s12B allows for complaints to be made by a 'body of persons' directly affected, CF&KC-SA as a body of persons affected could raise systemic issues only for the purpose of a complaint.

When can I approach the Ombudsman?

In the first instance Carers are encouraged to formally raise a complaint with DCP and allow the agency a reasonable amount of time to respond to the complaint.

The following is a list of documents you can include in your complaint to the Ombudsman once you have received a response from DCP:

- the name of the agency (e.g. government department, statutory authority, council) your complaint is about
- a clear outline of your complaint
- the steps you have taken to sort out the complaint with the agency
- dates of the agency's acts that you are concerned about
- other key dates
- any documents to support your complaint, such as:
 - emails or letters you have sent the agency
 - any responses you have received from the agency
 - photographs (if you have any)
- what you are seeking.

What types of issues might I contact the Ombudsman with?

Carers can raise specific issues with the Ombudsman, including:

- actions of DCP in relation to notifications of abuse/neglect/care concerns;
- investigations or assessments undertaken by DCP in response to the child/Carer;
- compliance with Aboriginal and Torres Strait Islander Child Placement Principles and general Placement Principles;
- administrative processes of DCP (e.g. to account for delays or lapses in communication);
- complaints relating to DCP;
- case management complaints; and
- accessibility of support for Carers.

Carers are specifically excluded from making complaints relating to:

- issues relating to the approval of Carers;
- issues relating to the temporary placements of children and young people;
- reviews relating to long-term guardianship; or
- voluntary custody agreements.

PLEASE NOTE:

As the Contact Arrangements Review Panel (CARP) provides a statutory right of review under the CYPS Act, the Ombudsman must not investigate a complaint about these decisions. However, on occasion the Ombudsman has considered complaints about CARP focusing on the process rather than decision itself (unless the decision was manifestly unreasonable). On these limited occasions the Ombudsman only has the power to recommend reconsideration of the matter.

How does the Ombudsman decide to investigate a complaint or report?

In deciding whether an investigation is in the public interest, the Ombudsman will consider the following:

- does the alleged administrative error amount to a serious failure to meet expected standards of public administration?
- is the complaint about matters of serious concern and benefit to the public rather than simply an individual's interest?
- is there evidence of ongoing systemic failure in public administration?
- are the circumstances of the complaint likely to arise again?
- is the complaint about an error of process?
- is the complaint about failures of ethical and transparent management?
- does the complaint relate to matters of public safety and security, the economic well-being of South Australia, the protection of public well-being, the protection of human rights or the rights and freedoms of citizens?
- has the complainant suffered significant personal loss?
- do the circumstances of the complainant increase their risk of experiencing abuse, neglect or other disadvantage?
- would investigation of the complaint be likely to lead to meaningful outcomes for the complainant and/or to the improvement of public administration?
- has another review body considered the matter or is another body more appropriate for reviewing the matter?
- what is the likelihood of collecting sufficient evidence to support a finding of administrative error?
- would investigation of the complaint involve effort and resources that are proportionate to the seriousness of the matter?

How do I make a complaint to the Ombudsman?

You can lodge a complaint using the online form available at:

www.ombudsman.sa.gov.au/make-a-complaint

The Ombudsman is open to hearing from Carers. If the Ombudsman finds they do not have the power to investigate, they will assist in determining the right course of action.

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

Email: support@cfc-sa.org.au

Freecall: 1800 732 272